

# The Gazette of India

## EXTRAORDINARY PART II—Section 2 PUBLISHED BY AUTHORITY

No. 36] NEW DELHI, WEDNESDAY, SEPTEMBER 2, 1953

### HOUSE OF THE PEOPLE

The following Bill was introduced in the House of the People on  
2nd September, 1953:—

BILL No 46 OF 1953.

*A Bill to consolidate and amend the law relating to companies and certain other associations.*

BE IT enacted by Parliament as follows :—

#### PART I

#### PRELIMINARY

**1. Short title, commencement and extent.**—(1) This Act may be called the Companies Act, 1953.

(2) It shall come into force on the first day of April, 1954.

(3) It extends to the whole of India except the State of Jammu and Kashmir

**2. Definitions.**—In this Act, unless the context otherwise requires,—

(1) “articles” means the articles of association of a company as originally framed or as altered from time to time in pursuance of any previous companies law or of this Act, including, so far as they apply to the company, the regulations contained in the case may be, in Table B in the Schedule annexed to Act No. XIX of 1857 or in Table A in the First Schedule annexed to the Indian Companies Act, 1832 (VI of 1882), or in Table A in the First Schedule annexed to the Indian Companies Act, 1913 (VII of 1913), or in Table A in Schedule I annexed to this Act ;

(2) “associate of the managing agent” means any of the following, and no others :—

- (a) any partner of the managing agent ;
- (b) any firm in which the managing agent is a partner ;
- (c) where the managing agent, or any firm in which the managing agent is a partner, is a director, managing agent or manager of any private company, such private company ;
- (d) where the managing agent is a body corporate, any subsidiary company thereof and any director, managing agent, manager or officer either of the body corporate or of any subsidiary thereof ;

(e) where the managing agent is a private company, any director or member thereof ;

(f) any body corporate at any general meeting of which on less than one half of the total voting power may be exercised or controlled by the managing agent, whether alone or together with any partner or partners, or where the managing agent is itself a body corporate, by any person authorised to act on its behalf, whether alone or together with any other person or persons authorised to act on behalf of any subsidiary or subsidiaries thereof ;

(3) "banking company" has the same meaning as in the Banking Companies Act, 1949 (X of 1949) ;

(4) "body corporate" or "corporation" includes a company incorporated outside India but does not include a corporation sole ;

(5) "book and paper" and "book or paper" include accounts, deeds, writings, and documents ;

(6) "branch office"—

(i) in the case of a banking or an insurance company, means any establishment described as a branch by the company, and

(ii) in the case of any other company, means any establishment not being an establishment where the same or substantially the same activity as that carried on at the head office of the company, or any production or manufacture, is carried on ;

(7) "company" means a company as defined in section 3 ;

(8) "the Court" means, with respect to any matter relating to a company, the Court having jurisdiction under this Act with respect to that matter in relation to that company, as provided in section 8 ;

(9) "debenture" includes debenture stock, bonds and any other securities of a company, whether constituting a charge on the assets of the company or not ;

(10) "director" includes any person occupying the position of director, by whatever name called ;

(11) "District Court" means the principal Civil Court of original jurisdiction in a district, but does not include a High Court in the exercise of its ordinary original civil jurisdiction ;

(12) "document" includes summons, notice, order and other legal process, and registers ;

(13) "existing company" means an existing company as defined in section 3 ;

(14) "financial year" means, in relation to any body corporate, the period in respect of which any profit and loss account of the body corporate laid before it in annual general meeting is made up, whether that period is a year or not ;

(15) "holding company" means a holding company within the meaning of section 4 ;

(16) "India" means the territory of India excluding the State of Jammu and Kashmir ;

(17) "insurance company" means a company which carries on the business of insurance either solely or in conjunction with any other business or businesses ;

(18) "issued generally" means, in relation to a prospectus, issued

to persons irrespective of their being existing members or debenture holders of the body corporate ;

(19) "manager" means an individual (not being the managing agent) who, subject to the control and direction of the directors, has the management of the whole, or substantially the whole, of the affairs of a company, and includes a director or any other person occupying the position of a manager by whatever name called and whether under a contract of service or not ;

(20) "managing agent" means any individual, firm or company entitled, subject to the provisions of this Act, to the management of the whole, or substantially the whole, of the affairs of a company by virtue of an agreement with the company, or by virtue of its memorandum or articles of association, and includes any individual, firm or company occupying the position of a managing agent, by whatever name called ;

(21) "managing director" means a director who, by virtue of an agreement with the company or of a resolution passed by the company or its directors or by virtue of its memorandum or articles of association, is entrusted with any powers of management which would not otherwise be exercisable by him, and includes a director occupying the position of a managing director, by whatever name called ;

(22) "memorandum" means the memorandum of association of a company as originally framed or as altered from time to time in pursuance of any previous companies law or of this Act ;

(23) "officer" includes any director, managing agent, manager or secretary ; or where the managing agent is a firm or body corporate, any partner of he firm or any director, managing agent or manager of the body corporate ; but, save in sections 441, 442, 500, 504, 506, 577, 578, 579, 580, and 581, does not include an auditor ;

(24) "officer who is in default", in relation to any provision referred to in section 5 has the meaning specified in that section ;

(25) "paid-up capital" or "capital paid up" includes capital credited as paid up ;

(26) "prescribed" means, as respects the provisions of this Act relating to the winding up of companies except sub-section (3) of section 512, prescribed by rules made by the Supreme Court in consultation with High Courts, and, as respects the other provisions of this Act, prescribed by rules made by the Central Government ;

(27) "previous companies law" means any of the laws specified in clause (ii) of sub-section (1) of section 3 ;

(28) "private company" means a private company as defined in section 3 ;

(29) "public company" means a public company as defined in section 3 ;

(30) "prospectus" means any prospectus, notice, circular, advertisement or other invitation, offering to the public for subscription or purchase any shares or debentures of a body corporate ;

(31) "Registrar" means a Registrar or Assistant Registrar having the duty of registering companies under this Act ;

(32) "Schedule" means a Schedule annexed to this Act ;

(33) "Scheduled Bank" has the same meaning as in the Reserve Bank of India Act, 1934 (II of 1934) ;

(34) "share" means share in the share capital of a company and includes stock except where a distinction between stock and shares is expressed or implied ;

(35) "subsidiary company" or "subsidiary" means a subsidiary company within the meaning of section 4 ;

(36) "total voting power", in regard to any matter relating to a body corporate, means the total number of votes which may be cast in regard to that matter at a meeting of such body, if all the members thereof and all other persons, if any, having a right to vote on that matter are present at the meeting, and cast their votes ;

(37) "trading corporation" means a trading corporation within the meaning of entries 43 and 44 in List I in the Seventh Schedule to the Constitution.

**3. Definitions of "company", "existing company", "private company" and "public company".—**(1) In this Act, unless the context otherwise requires, the expressions "company", "existing company", "private company" and "public company" shall, subject to the provisions of sub-section (2), have the meanings specified below :—

(i) "company" means a company formed and registered under this Act or any existing company as defined in clause (ii) ;

(ii) "existing company" means a company formed and registered under any of the previous companies laws specified below :—

(a) Any Act or Acts relating to companies in force before the Indian Companies Act, 1866 (X of 1866) and repealed by that Act ;

(b) The Indian Companies Act, 1866 (X of 1866) ;

(c) The Indian Companies Act, 1882 (VI of 1882) ;

(d) The Indian Companies Act, 1913 (VII of 1913) ; and

(e) Any law corresponding to any of the Acts aforesaid and in force in a Part B State at any time before the first day of April, 1951 ;

(iii) "private company" means a company which, by its articles—

(a) restricts the right to transfer its shares, if any ; and

(b) limits the number of its members to fifty not including—

(i) persons who are in the employment of the company, and

(ii) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased ; and



(c) prohibits any invitation to the public to subscribe for any shares or debentures of the company :

Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this definition, be treated as a single member ;

(iv) " public company " means a company which is not a private company.

(2) Unless the context otherwise requires, the following companies shall not be included within the scope of any of the expressions defined in clauses (i) to (iv) of sub-section (1), and such companies shall be deemed, for the purposes of this Act, to have been formed and registered outside India :—

(a) a company the registered office whereof is in Burma, Aden or Pakistan and which immediately before the separation of that country from India was a company as defined in clause (i) of sub-section (1) ;

(b) a company the registered office whereof is in the State of Jammu and Kashmir and which immediately before the 26th day of January, 1950, was a company as defined in clause (i) aforesaid.

4. **Meaning of " holding company " and " subsidiary ".**—(1) For the purposes of this Act, a company shall, subject to the provisions of sub-section (3), be deemed to be a subsidiary of another if, but only if,—

(a) that other controls the composition of its board of directors ;  
or

(b) that other holds more than half in nominal value of its equity share capital ; or

(c) the first-mentioned company is a subsidiary of any company which is that other's subsidiary.

#### *Illustration*

Company B is a subsidiary of Company A, and Company C is a subsidiary of Company B. Company C is a subsidiary of Company A, by virtue of clause (c) above. If Company D is a subsidiary of Company C, Company D will be a subsidiary of Company B and consequently also of Company A, by virtue of clause (c) above ; and soon.

(2) For the purposes of sub-section (1), the composition of a company's board of directors shall be deemed to be controlled by another company if, but only if, that other company by the exercise of some power exercisable by it at its discretion without the consent or concurrence of any other person, can appoint or remove the holders of all or a majority of the directorships ; but for the purposes of this provision that other company shall be deemed to have power to appoint to a directorship with respect to which any of the following conditions is satisfied, that is to say—

(a) that a person cannot be appointed thereto without the exercise in his favour by that other company of such a power as aforesaid ;  
or

(b) that a person's appointment thereto follows necessarily from his appointment as director, managing agent, or manager of or to any other office or employment in, that other company ; or

(c) that the directorship is held by that other company itself or by a subsidiary of it.

(3) In determining whether one company is a subsidiary of another—

(a) any shares held or power exercisable by that other company in a fiduciary capacity shall be treated as not held or exercisable by it ;

(b) subject to the provisions of clauses (c) and (d), any shares held or power exercisable—

(i) by any person as a nominee for that other company (except where that other is concerned only in a fiduciary capacity) ; or

(ii) by, or by a nominee for, a subsidiary of that other company, not being a subsidiary which is concerned only in a fiduciary capacity ;

shall be treated as held or exercisable by that other company ;

(c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first-mentioned company or of a trust deed for securing any issue of such debentures shall be disregarded ;

(d) any shares held or power exercisable by, or by a nominee for, that other or its subsidiary [not being held or exercisable as mentioned in clause (c)] shall be treated as not held or exercisable by that other, if the ordinary business of that other or its subsidiary, as the case may be, includes the lending of money and the shares are held or the power is exercisable as aforesaid by way of security only for the purposes of a transaction entered into in the ordinary course of that business.

(4) For the purposes of this Act, a company shall be deemed to be the holding company of another if, but only if, that other is its subsidiary.

(5) In this section, the expression “company” includes any body corporate, and the expression “equity share capital” means, in relation to a company, its subscribed share capital excluding any part thereof which on a distribution, as respects dividends, carries no right to participate beyond a fixed amount and, as respects capital, carries no right to participate beyond the paid up share capital together with any fixed premium or premium on a fixed scale, as specified in the company’s memorandum or articles.

**5. Meaning of “officer who is in default”.**—For the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any punishment or penalty, whether by way of imprisonment, fine or otherwise, the expression “officer who is in default” means any officer of the company who is knowingly guilty of the default, non-compliance, failure, refusal or contravention mentioned in that provision or who knowingly authorises or permits such default, non-compliance, failure, refusal or contravention.

**6. Interpretation of “person in accordance with whose directions or instructions directors are accustomed to act”.**—Except where this Act expressly provides otherwise, a person shall not be deemed to be, within the meaning of any provision in this Act, a person in accordance with whose directions or instructions the directors of a company are accustomed to act, by reason only that the directors of the company act on advice given by him in a professional capacity.

**7. Act to override memorandum, articles, etc.**—Same as otherwise expressly provided in the Act—

(a) the provisions of this Act shall have effect notwithstanding anything to the contrary contained in the memorandum or articles of, or in any agreement executed by, or in any resolution passed in general meeting by or by the directors of, any company, whether the same be registered, executed or passed, as the case may be, before or after the commencement of this Act; and

(b) any provision contained in the memorandum, articles, agreement or resolution aforesaid shall, to the extent to which it is repugnant to the provisions of this Act, become or be void, as the case may be.

**8. Jurisdiction of Courts.**—(1) The Court having jurisdiction under this Act shall be—

(a) the High Court having jurisdiction in relation to the place at which the registered office of the company concerned is situate, except to the extent to which jurisdiction has been conferred on any District Court or District Courts subordinate to that High Court in pursuance of sub-section (2); and

(b) where jurisdiction has been so conferred, the District Court in regard to matters falling within the scope of the jurisdiction conferred, in respect of companies having their registered offices in the district.

(2) The Central Government may, by notification in the Official Gazette and subject to such restrictions, limitations and conditions as it thinks fit, empower any District Court to exercise all or any of the jurisdiction conferred by this Act upon the Court, not being the jurisdiction conferred—

(a) in respect of companies generally, by sections 222, 362, 363, 365, and 367 to 377 both inclusive

(b) in respect of companies with a paid-up share capital of not less than one lakh of rupees, by Part VII (sections 389 to 519) and the other provisions of this Act relating to the winding up of Companies,

(3) For the purposes of jurisdiction to wind up companies, the expression "registered office" means the place which has longest been the registered office of the company during the six months immediately preceding the presentation of the petition for winding up.

(4) Nothing in this section shall invalidate any proceeding by reason only of its having been taken in a wrong Court.

## PART II

### INCORPORATION OF COMPANY AND MATTERS INCIDENTAL THEREOF

*Certain companies, associations and partnerships to be registered as companies under Act*

**9. Prohibition of associations and partnerships exceeding certain number.**—(1) No company, association or partnership consisting of more than ten persons shall be formed for the purpose of carrying on the business of banking, unless it is registered as a company under this Act, or is formed in pursuance of some other Indian law.

(2) No company, association or partnership consisting of more than twenty persons shall be formed for the purpose of carrying on any other business that has for its object the acquisition of gain by the company, association or partnership, or by the individual members thereof, unless it is registered as a company under this Act, or is formed in pursuance of some other Indian law.

(3) This section shall not apply to a joint family carrying on a business ; and where a business is carried on by two or more joint families, in computing the number of persons for the purposes of sub-sections (1) and (2), minor members of such families shall be excluded.

(4) Every member of a company, association or partnership carrying on business in contravention of this section shall be personally liable for all liabilities incurred in such business.

(5) Every person who is a member of a company, association or partnership formed in contravention of this section shall be punishable with fine which may extend to one thousand rupees.

#### *Memorandum of Association*

**10. Mode of forming incorporated company.**—(1) Any seven or more persons, or where the company to be formed will be a private company, any two or more persons, associated for any lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Act in respect of registration, form an incorporated company, with or without limited liability.

(2) Such a company may be either—

(a) a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them (in this Act termed “a company limited by shares”) ; or

(b) a company having the liability of its members limited by the memorandum to such amount as the members may respectively undertake by the memorandum to contribute to the assets of the company in the event of its being wound up (in this Act termed “a company limited by guarantee”) ; or

(c) a company not having any limit on the liability of its members (in this Act termed “an unlimited company”).

**11. Requirements with respect to memorandum.**—(1) The memorandum of every company shall state—

(a) the name of the company, with “Limited” as the last word of the name in the case of a company limited by shares or by guarantee ;

(b) the State in which the registered office of the company is to be situate ;

(c) the objects of the company, and, except in the case of trading corporations, the State or States to whose territories the objects extend.

(2) The memorandum of a company limited by shares or by guarantee shall also state that the liability of its members is limited.

(3) The memorandum of a company limited by guarantee shall also state that each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year after he ceases to be a member, for payment of the debts and liabilities of the company, or of such debts and liabilities of the company as may have been contracted before he ceases to be a member, as the case may be, and of the costs, charges and expenses of winding up, and for adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount.

(4) In the case of a company having a share capital—

(a) unless the company is an unlimited company, the memorandum shall also state the amount of share capital with which the company is to be registered and the division thereof into shares of a fixed amount ;

(b) no subscriber of the memorandum shall take less than one share ;

(c) each subscriber shall write opposite to his name the number of shares he takes.

**12. Printing and signature of memorandum.**—The memorandum shall—

(a) be printed,

(b) be divided into paragraphs numbered consecutively, and

(c) be signed by each subscriber (who shall add his address, description and occupation, if any,) in the presence of at least one witness who shall attest the signature.

**13. Alteration of memorandum.**—(1) A company shall not alter the conditions contained in its memorandum except in the cases, in the mode, and to the extent, for which express provision is made in this Act.

(2) Only those provisions which are required by section 11 or by any other specific provision contained in this Act, to be stated in the memorandum of the company concerned shall be deemed to be conditions contained in its memorandum.

(3) Other provisions contained in the memorandum, including those relating to the appointment of a managing director, managing agent or manager, may be altered in the same manner as the articles of the company, but if there is any express provision in this Act permitting of the alteration of such provisions in any other manner, they may also be altered in such other manner.

All references to the articles of a company in this Act shall be construed as including references to the other provisions aforesaid contained in its memorandum.

**14. Procedure for alteration of memorandum in regard to State in which registered office of company is to be situated or objects of company.**—(1) A company may, by special resolution, alter the provisions of its memorandum so as to change the place of the registered office from

one State to another, or with respect to the objects of the company, so far as may be required to enable it—

(a) to carry on its business more economically or more efficiently ;  
or

(b) to attain its main purpose by new or improved means ; or

(c) to enlarge or change the local area of its operations ; or

(d) to carry on some business which may conveniently or advantageously be combined with the business of the company ; or

(e) to restrict or abandon any of the objects specified in the memorandum ; or

(f) to sell or dispose of the whole or any part of the undertaking of the company ; or

(g) to amalgamate with any other company or body of persons.

(2) The alteration shall not take effect until, and except in so far as, it is confirmed by the Court on petition.

(3) Before confirming the alteration, the Court must be satisfied—

(a) that sufficient notice has been given to every holder of the debentures of the company, and to every other person or class of persons whose interests will, in the opinion of the Court, be affected by the alteration ; and

(b) that, with respect to every creditor who in the opinion of the Court is entitled to object to the alteration, and who signifies his objection in the manner directed by the Court, either his consent to the alteration has been obtained or his debt or claim has been discharged or has been determined, or has been secured to the satisfaction of the Court ;

Provided that the Court may, in the case of any person or class of persons, for special reasons, dispense with the notice required by this sub-section.

(4) The Court may make an order confirming the alteration either wholly or in part, and on such terms and conditions as it thinks fit, and may make such order as to costs as it thinks proper.

(5) The Court shall, in exercising its powers under this section, have regard to the rights and interests of the members of the company and of every class of them, as well as to the rights and interests of the creditors.

(6) The Court if may, it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Court for the purchase of the interests of dissentient members ; and may give such directions and make such orders as it thinks fit for facilitating or carrying into effect any such arrangement :

Provided that no part of the capital of the company may be expended in any such purchase.

**15. Procedure on confirmation of the alteration.**—(1) A certified copy of the order confirming the alteration, together with a printed copy of the memorandum as altered, shall, within three months from the date of the order, be filed by the company with the Registrar, and he shall register the same, and shall certify the registration under his hand.

(2) The certificate shall be conclusive evidence that all the requirements of this Act with respect to the alteration and the confirmation thereof have been complied with, and thenceforth the memorandum as so altered shall be the memorandum of the company.

(3) Where the alteration involves a transfer of the registered office from one State to another, a certified copy of the order confirming such change shall be filed by the company with the Registrar in each of the States, and the Registrar of each such State shall register the same, and shall certify under his hand the registration thereof; and the Registrar of the State from which such office is transferred shall send to the Registrar of the other State all documents relating to the company registered, recorded or filed in his office.

(4) The Court may, at any time, by order, extend the time for the filing of documents under this section by such period as it thinks proper.

**16. Effect of failure to register within three months.**—(1) No such alteration shall have any effect until it has been duly registered in accordance with the provisions of section 15.

(2) If the registration is not effected within three months next after the date of the order of the Court confirming the alteration, or within such further time as may be allowed by the Court under sub-section (4) of section 15, such alteration and order and all proceedings connected therewith shall, at the expiration of such period of three months or of such further time, as the case may be, become void:

Provided that the Court may, on sufficient cause shown, revive the order on application made within a further period of one month.

*Provisions with respect to names of companies.*

**17. Prohibition of registration of companies by undesirable names.**—(1) No company shall be registered by a name which, in the opinion of the Central Government, is undesirable.

(2) Without prejudice to the generality of the foregoing power, a name which is either identical with, or too nearly resembles, the name by which a company in existence has been previously registered, may be deemed to be undesirable by the Central Government within the meaning of sub-section (1).

**18. Change of name by company.**—A company may, by special resolution and with the approval of the Central Government signified in writing, change its name.

**19. Rectification of name of company.**—(1) If, through inadvertence or otherwise, a company on its first registration or on its registration by a new name, is registered by a name which, in the opinion of the Central Government, is either identical with, or too nearly resembles, the name by which a company in existence has been previously registered) whether under this Act or any previous companies law, the first-mentioned company—

(a) may, by ordinary resolution and with the previous approval of the Central Government signified in writing, change its name or new name, and

(b) shall, if the Central Government so directs within twelve months of its first registration or registration by its new name, as the case may be,

by ordinary resolution and with the previous approval of the Central Government signified in writing, change its name or new name within a period of three months from the date of the direction or such longer period as the Central Government may think fit to allow.

(2) If a company makes default in complying with any direction given under clause (b) of sub-section (1), it shall be punishable with fine which may extend to one hundred rupees for every day during which the default continues.

**20. Registration of change of name and effect thereof.—(1)** Where a company changes its name in pursuance of section 18 or 19, the Registrar shall enter the new name on the register in the place of the former name, and shall issue a fresh certificate of incorporation with the necessary alterations embodied therein; and the change of name shall be complete and effective only on the issue of such a certificate.

(2) The Registrar shall also make the necessary alteration in the memorandum of association of the company.

(3) The change of name shall not affect any rights or obligations of the company, or render defective any legal proceedings by or against it; and any legal proceedings which might have been continued or commenced by or against the company by its former name may be continued by or against the company by its new name.

**21. Power to dispense with "Limited" in name of charitable or other company.—(1)** Where it is proved to the satisfaction of the Central Government that an association—

(a) is about to be formed as a limited company for promoting commerce, art, science, religion, charity or any other useful object, and

(b) intends to apply its profits, if any, or other income in promoting its objects, and to prohibit the payment of any dividend to its members,

the Central Government may, by licence, direct that the association may be registered as a company with limited liability, without the addition of the word "Limited" to its name.

(2) The association may thereupon be registered accordingly; and on registration shall enjoy all the privileges and (subject to the provisions of this section) be subject to all the obligations of limited companies.

(3) Where it is proved to the satisfaction of the Central Government—

(a) that the objects of a company registered under this Act as a limited company are restricted to those specified in clause (a) of sub-section (1); and

(b) that by its constitution the company is required to apply its profits, if any, or other income in promoting its objects and is prohibited from paying any dividend to its members;

the Central Government may, by licence, authorise the company to make by special resolution a change in its name, including or consisting of the omission of the word "Limited", and section 20 shall apply to a change of name under this sub-section as it applies to a change of name under section 18.

(4) A firm may be a member of any association or company licensed under this section, but on the dissolution of the firm, its membership of the association or company shall cease.



(5) A licence may be granted by the Central Government under this section on such conditions and subject to such regulations as that Government thinks fit, and those conditions and regulations shall be binding on the body to which the licence is granted, and where the grant is under sub-section (1) shall, if the Central Government so directs, be inserted in the memorandum or in the articles, or partly in the one and partly in the other.

(6) The body to which a licence is so granted shall be exempt from the provisions of this Act relating to—

(a) the use of the word "Limited" as any part of its name,

(b) the publishing of its name,

(c) the sending of lists of members to the Registrar, and

(d) if the Central Government so directs and to the extent specified in the direction, the obligations laid on the company by section 281.

(7) The licence may at any time be revoked by the Central Government, and upon revocation, the Registrar shall enter the word "Limited" at the end of the name upon the register of the body to which it was granted; and the body shall cease to enjoy the exemptions and privileges or, as the case may be, the exemption, granted by this section:

Provided that, before a licence is so revoked, the Central Government shall give notice in writing of its intention to the body, and shall afford it an opportunity of being heard in opposition to the revocation.

(8) Where a body in respect of which a licence under this section is in force alters the provisions of its memorandum with respect to its objects, the Central Government may—

(a) revoke the licence if it sees fit to do so, or

(b) vary the licence by making it subject to such conditions and regulations as the Central Government thinks fit, in lieu of, or in addition to, the conditions and regulations, if any, to which the licence was formerly subject.

(9) Upon the revocation of a licence granted under this section to a body the name of which contains the words "Company of Commerce" that body shall, within a period of three months from the date of revocation or such longer period as the Central Government may think fit to allow, change its name to a name which does not contain those words; and—

(a) the notice to be given under the proviso to sub-section (7) to that body shall include a statement of the effect of the foregoing provisions of this sub-section; and

(b) section 20 shall apply to a change of name under this sub-section as it applies to a change of name under section 18.

(10) If the body makes default in complying with the requirements of sub-section (9), it shall be punishable with fine which may extend to five hundred rupees for every day during which the default continues.

(11) Nothing contained in this section shall apply to a company which is not a trading corporation and whose objects are confined to a single Part A or Part B State.

*Articles of Association*

**22. Articles prescribing regulations.**—There may in the case of a company limited by shares, and there shall in the case of an unlimited company or a company limited by guarantee, be registered with the memorandum, articles of association signed by the subscribers of the memorandum, prescribing regulations for the company.

**23. Regulations required in case of unlimited company or company limited by guarantee.**—(1) In the case of an unlimited company, the articles shall state the number of members with which the company is to be registered and, if the company has a share capital, the amount of share capital with which the company is to be registered.

(2) In the case of a company limited by guarantee, the articles shall state the number of members with which the company is to be registered.

**24. Adoption and application of Table A.**—(1) Articles of association may adopt all or any of the regulations contained in Table A in Schedule I.

(2) In the case of a company limited by shares and registered after the commencement of this Act, if articles are not registered, or if articles are registered, in so far as the articles do not exclude or modify the regulations contained in Table A aforesaid, those regulations shall, so far as applicable, be the regulations of the company in the same manner and to the same extent as if they were contained in duly registered articles.

**25. Form and signature of articles.**—Articles shall—

- (a) be printed;
- (b) be divided into paragraphs numbered consecutively ; and
- (c) be signed by each subscriber of the memorandum of association ( who shall add his address, description and occupation, if any,) in the presence of at least one witness who shall attest the signature.

**26. Alteration of articles by special resolution.**—(1) Subject to the provisions of this Act and to the conditions contained in its memorandum a company may, by special resolution, alter or add to its articles.

(2) Any alteration or addition so made in the articles shall, subject to the provisions of this Act, be as valid as if originally contained therein, and be subject in like manner to alteration by special resolution.

(3) The power of altering articles under this section shall, in the case of any company formed and registered under Act No. XIX of 1857 and Act No. VII of 1860 or either of them, extend to altering any provisions in Table B annexed to Act XIX of 1857, and shall also, in the case of an unlimited company formed and registered under the said Acts or either of them, extend to altering any regulations relating to the amount of capital or its distribution into shares, notwithstanding that those regulations are contained in the memorandum.

*Change of registration of companies*

**27. Registration of unlimited company as limited etc.**—(1) Subject to the provisions of this section,—

- (a) a company registered as unlimited under this Act or under any previous companies law may re-register or register under this Act as an unlimited, or as a limited, company ; and
- (b) a company registered as a limited company under this Act or under any previous companies law may re-register or register under this Act as a limited, or as an unlimited, company.

(2) On re-registration or registration in pursuance of this section, the Registrar shall close the former registration of the company, and may dispense with the delivery to him of copies of any documents with copies of which he was furnished on the occasion of the original registration of the company ; but, save as aforesaid, the re-registration or registration shall take place in the same manner and shall have effect as if it were the first registration of the company under this Act.

(3) The re-registration or registration of an unlimited or of a limited company under this section as a limited company shall not affect the rights or liabilities of the company in respect of any debt or obligation incurred, or any contract entered into, by, to, with or on behalf of the company before the re-registration or registration, and those rights or liabilities may be enforced in the manner provided by Part IX of this Act in the case of a company registered in pursuance of that Part.

*General provisions with respect to memorandum and articles.*

**28. Registration of memorandum and articles.**—The memorandum and the articles, if any, shall be filed with the Registrar of the State or part of the State in which the registered office of the company is stated by the memorandum to be situate, and he shall retain and register them.

**29. Effect of registration.**—(1) On the registration of the memorandum of a company, the Registrar shall certify under his hand that the company is incorporated and in the case of a limited company, that the company is limited.

(2) From the date of incorporation mentioned in the certificate of incorporation, such of the subscribers of the memorandum and other persons, as may from time to time be members of the company, shall be a body corporate by the name contained in the memorandum, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession and a common seal, but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is mentioned in this Act.

**30. Conclusiveness of certificate of incorporation.**—(1) A certificate of incorporation given by the Registrar in respect of any association shall be conclusive evidence that all the requirements of this Act have been complied with in respect of registration and matters precedent and incidental thereto, and that the association is a company authorised to be registered and duly registered under this Act.

(2) A declaration by an advocate of the Supreme Court or of a High Court, an attorney or a pleader entitled to appear before a High Court, or a chartered accountant practising in India, who is engaged in the formation of a company, or by a person named in the articles as a director, managing agent, manager or secretary of the company, of compliance with the requirements aforesaid shall be filed with the Registrar; and the Registrar may accept such a declaration as sufficient evidence of such compliance.

**31. Effect of memorandum and articles.**—(1) Subject to the provisions of this Act, the memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed by the company and by each member, and contained covenants on its and his part to observe all the provisions of the memorandum and of the articles.

(2) All money payable by any member to the company under the memorandum or articles shall be a debt due from him to the company.

**32. Provision as to companies limited by guarantee.**—(1) In the case of a company limited by guarantee and not having a share capital, and registered on or after the first day of April 1914, every provision in the memorandum or articles or in any resolution of the company purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member shall be void.

(2) For the purpose of the provisions of this Act relating to the memorandum of a company limited by guarantee and of this section, every provision in the memorandum or articles, or in any resolution, of any company limited by guarantee and registered on or after the first day of April 1914, purporting to divide the undertaking of the company into shares or interests, shall be treated as a provision for a share capital, notwithstanding that the nominal amount or number of the shares or interests is not specified thereby.

**33. Effect of alteration in memorandum or articles.**—Notwithstanding anything in the memorandum or articles of a company, no member of the company shall be bound by an alteration made in the memorandum or articles after the date on which he became a member, if and so far as the alteration requires him to take or subscribe for more shares than the number held by him at the date on which the alteration is made, or in any way increases his liability as a member, whether directly or indirectly, to contribute to the share capital of, or otherwise to pay money to, the company:

Provided that this section shall not apply in any case where the member agrees in writing, either before or after a particular alteration is made, to be bound by the alteration.

**34. Copies of memorandum and articles etc. to be given to members.**—(1) A company shall, on being so required by any member, send to him within seven days of the requirement, a copy each of the memorandum, of the articles, if any, and of the resolutions and agreements referred to in section 184, if any, subject to the payment of one rupee.

(2) If a company makes default in complying with the requirements of this section, the company, and every officer of the company who is in default, shall be punishable, for each offence, with fine which may extend to fifty rupees.

**35. Alteration of memorandum or articles etc. to be noted in every copy.**—(1) Where an alteration is made in the memorandum or articles of a company or in any resolution or agreement referred to in section 184, every copy of the memorandum, articles, resolution or agreement issued after the date of the alteration shall be in accordance with the alteration.

(2) If, at any time, the company issues any copies of the memorandum, articles, resolution or agreement, which are not in accordance with the alteration or alterations made therein before that time, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to ten rupees for each copy so issued.

*Membership of company*

**36. Definition of "member".**—(1) The subscribers of the memorandum of a company shall be deemed to have agreed to become members of the company, and on its registration shall be entered as members in its register of members.

(2) Every other person who agrees to become a member of a company and whose name is entered in its register of members, shall be a member of the company.

**37. Membership of holding company.**—(1) Except in the cases mentioned in this section, a body corporate cannot be a member of a company which is its holding company, and any allotment or transfer of shares in a company to its subsidiary shall be void.

(2) Nothing in this section shall apply—

(a) where the subsidiary is concerned as the legal representative of a deceased member of the holding company; or

(b) where the subsidiary is concerned as trustee, unless the holding company or a subsidiary thereof is beneficially interested under the trust and is not so interested only by way of security for the purposes of a transaction entered into by it in the ordinary course of a business which includes the lending of money.

(3) This section shall not prevent a subsidiary which, at the commencement of this Act, is a member of its holding company, from continuing to be a member but, except in the cases referred to in sub-section (2), the subsidiary shall have no right to vote at meetings of the holding company or any class of members thereof.

(4) Subject to sub-section (2), sub-sections (1) and (3) shall apply in relation to a nominee for a body corporate which is a subsidiary, as if references in the said sub-sections (1) and (3) to such a body corporate included references to a nominee for it.

(5) In relation to a holding company which is either a company limited by guarantee or an unlimited company, the reference in this section to shares, whether or not the company has a share capital, shall be construed as including a reference to the interest of its members as such, whatever the form of that interest.

*Private companies*

**38. Consequences of default in complying with conditions constituting a company a private company.**—Where the articles of a company include the provisions which, under clause (iii) of sub-section (1) of section 3, are required to be included in the articles of a company in order to constitute it a private company, but default is made in complying with any of those provisions, the company shall cease to be entitled to the privileges and exemptions conferred on private companies under the provisions contained in this Act, and the provisions of this Act shall apply to the company as if it were not a private company :

Provided that the Court, on being satisfied that the failure to comply with the conditions was accidental or due to inadvertence or to some other sufficient cause, or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any other person interested and on such terms and conditions as seem to the Court just and expedient, order that the company be relieved from such consequences as aforesaid.

**39. Prospectus or statement in lieu of prospectus to be filed by private company on ceasing to be private company.**—(1) If a company, being a private company, alters its articles in such a manner that they no longer include the provisions which, under clause (iii) of sub-section (1) of section 3, are required to be included in the articles of a company in order to constitute it a private company, the company—

(a) shall, as on the date of the alteration, cease to be a private company ;  
and

(b) shall, within a period of fourteen days after the said date, file with the Registrar either a prospectus or a statement in lieu of prospectus, as specified in sub-section (2).

(2) (a) Every prospectus filed under sub-section (1) shall state the matters specified in Part I of Schedule II and set out the reports specified in Part II of that Schedule, and the said Parts I and II shall have effect subject to the provisions contained in Part III of that Schedule.

(b) Every statement in lieu of prospectus filed under sub-section (1) shall be in the form and contain the particulars set out in Part I of Schedule IV, and in the cases mentioned in Part II of that Schedule, shall set out the reports specified therein, and the said Parts I and II shall have effect subject to the provisions contained in Part III of that Schedule.

(c) Where the persons making any such report as is referred to in clause (a) or (b) have made therein, or have, without giving the reasons, indicated therein, any such adjustments as are mentioned in clause 32 of schedule II or clause 5 of Schedule IV, as the case may be, the prospectus or statement in lieu of prospectus filed as aforesaid, shall have endorsed thereon or attached thereto, a written statement signed by those persons, setting out the adjustments and giving the reasons therefor.

(3) If default is made in complying with sub-section (1) or (2), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees.

(4) Where any prospectus or statement in lieu of prospectus filed under this section includes any untrue statement, any person who authorised the

filing of such prospectus or statement shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to five thousand rupees, or with both, unless he proves either that the untrue statement was immaterial or that he had reasonable ground to believe, and did up to the time of the filing of the prospectus or statement believe, that the untrue statement was true.

(5) For the purposes of this section—

- (a) a statement included in a prospectus or a statement in lieu of prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included ;
- (b) a statement shall be deemed to be included in a prospectus or a statement in lieu of prospectus if it is contained in any report or memorandum appearing on the face thereof or is by reference incorporated therein ; and
- (c) where the omission from a prospectus or a statement in lieu of prospectus of any matter which is required to be stated therein under the provisions of Schedule II or IV, as the case may be, is calculated to mislead, the prospectus or statement in lieu of prospectus shall be deemed, in respect of such omission, to be a prospectus or a statement in lieu of prospectus in which an untrue statement is included.

*Reduction of number of members below legal minimum.*

**40. Members severally liable for debts where business carried on with fewer than seven, or in the case of a private company, two members.**—If at any time the number of members of a company is reduced, in the case of a public company, below seven, or in the case of a private company, below two, and the company carries on business for more than six months while the number is so reduced, every person who is a member of the company during the time that it so carries on business after those six months and is cognisant of the fact that it is carrying on business with fewer than seven members or two members, as the case may be, shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be severally sued therefor.

*Contracts etc.*

**41. Form of contracts.**—(1) Contracts on behalf of a company may be made as follows :—

- (a) a contract which, if made between private persons, would by law be required to be in writing signed by the parties to be charged therewith, may be made on behalf of the company in writing signed by any person acting under its authority, express or implied, and may in the same manner be varied or discharged ;
- (b) a contract which, if made between private persons, would by law be valid although made by parol only, and not reduced into writing, may be made by parol on behalf of the company by any person acting under its authority, express or implied, and may in the same manner be varied or discharged.

(2) A contract made according to this section shall be effectual in law and shall bind the company and all other parties thereto.

**42. Bills of exchange and promissory notes.**—A bill of exchange hundi or promissory note shall be deemed to have been made, drawn, accepted or endorsed on behalf of a company if made, drawn, accepted or endorsed in the name of, or on behalf or on account of, the company by any person acting under its authority, express or implied.

**43. Execution of deeds.**—(1) A company may, by writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds on its behalf in any place either in or outside India.

(2) A deed signed by such an attorney, on behalf of the company and under his seal, where sealing is required, shall bind the company and have the same effect as if it were under its common seal.

**44. Investments of company to be held in its own name.**—(1) All investments made or held by a company shall be registered or held by it in its own name; and where any such investments are not so held at the commencement of this Act, the company shall, within a period of six months from such commencement cause them to be transferred to, and hold them in, its own name:

Provided that where the company has a right to appoint any person or persons as a director or directors of any other body corporate, shares in such other body corporate to an amount not exceeding the nominal value of the qualification shares which are required to be held by a director thereof, may be registered or held by such company jointly in the names of itself and of each such person.

(2) The shares referred to in the foregoing proviso shall be in the custody of the company entitled to make the appointment or of its bankers.

(3) If default is made in complying with any of the requirements of sub-sections (1) and (2), the company, and every officer of the company who is in default, shall be punishable, in respect of each offence, with fine which may extend to five thousand rupees.

**45. Power for company to have official seal for use outside India.**—(1) A company whose objects require or comprise the transaction of business outside India may, if authorised by its articles, have for use in any territory, district or place not situate in India an official seal which shall be a *facsimile* of the common seal of the company, with the addition on its face of the name of the territory, district or place where it is to be used.

(2) A company having an official seal for use in any such territory, district or place may, by writing under its common seal, authorise any person appointed for the purpose in that territory, district or place to affix the official seal to any deed or other document to which the company is a party in that territory, district or place.

(3) The authority of any agent authorised under sub-section (2) shall, as between the company and any person dealing with the agent, continue during the period, if any, mentioned in the instrument conferring the authority, or if no period is there mentioned, then, until notice of the revocation or determination of the agent's authority has been given to the person dealing with him.



(4) The person affixing any such official seal shall, by writing under his hand, certify on the deed or other document to which the seal is affixed, the date on which and the place at which, it is affixed.

(5) A deed or other document to which an official seal is duly affixed shall bind the company as if it had been sealed with the common seal of the company.

*Service of Notices etc.*

**46. Service of documents on company.**—A document may be served on a company by leaving it at, or by sending it either by ordinary post under a postal certificate or by registered post to, the registered office of the company.

**47. Service of documents on Registrar.**—A document may be served on the Registrar by sending it to him by ordinary post under a postal certificate or by registered post, or by delivering it to him or by leaving it for him, at his office.

**48. Service of notice on members by company.**—(1) A notice may be given by the company to any member either personally, or by sending it by post to him to his registered address, or if he has no registered address in India, to the address, if any, within India supplied by him to the company for the giving of notices to him.

(2) Where a notice is sent by post,—

(a) service of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice ; and

(b) unless the contrary is proved, such service shall be deemed to have been effected—

(i) in the case of a notice of a meeting, at the expiration of forty-eight hours after the letter containing the same is posted, and

(ii) in any other case, at the time at which the letter would be delivered in the ordinary course of post.

(3) If a member has no registered address in India, and has not supplied to the company an address within India for the giving of notices to him, a notice addressed to him and advertised in a newspaper circulating in the neighbourhood of the registered office of the company shall be deemed to be duly given to him on the day on which the advertisement appears.

(4) A notice may be given by the company to the joint-holders of a share by giving the notice to the joint-holder named first in the register in respect of the share.

(5) A notice may be given by the company to the persons entitled to a share in consequence of the death or insolvency of a member by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased, or assignee of the insolvent, or by any like description, at the address, if any, in India supplied for the purpose by the persons claiming to be so entitled, or until such an address has been so supplied, by giving the notice in any manner in which it might have been given if the death or insolvency had not occurred.

*Authentication of Documents*

**49. Authentication of documents.**—Save as otherwise expressly provided in this act, a document or proceeding requiring authentication by a company may be signed by a director, managing

agent, manager, secretary or other authorised officer of the company, and need not be under its common seal.

### PART III

#### PROSPECTUS AND ALLOTMENT, AND OTHER MATTERS RELATING TO ISSUE OF SHARES OR DEBENTURES

##### *Prospectus*

**50. Dating of prospectus.**—A prospectus issued by or on behalf of a company or in relation to an intended company shall be dated, and that date shall, unless the contrary is proved, be taken as the date of publication of the prospectus.

**51. Matters to be stated and reports to be set out in prospectus.**—(1) Every prospectus issued—

- (a) by or on behalf of a company, or
- (b) by or on behalf of any person who is or has been engaged or interested in the formation of a company,

shall state the matters specified in Part I of Schedule II and set out the reports specified in Part II of that Schedule, and the said Parts I and II shall have effect subject to the provisions contained in Part III of that Schedule.

(2) A condition requiring or binding an applicant for shares in or debentures of a company to waive compliance with any of the requirements of this section, or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus, shall be void.

(3) No one shall issue any form of application for shares in or debentures of a company, unless the form is accompanied by a prospectus which complies with the requirements of this section :

Provided that this sub-section shall not apply if it is shown that the form of application was issued either —

- (a) in connection with a *bona fide* invitation to a person to enter into an underwriting agreement with respect to the shares or debentures ; or
- (b) in relation to shares or debentures which were not offered to the public.

If any person acts in contravention of the provisions of this sub-section, he shall be punishable with fine which may extend to five thousand rupees.

(4) A director or other person responsible for the prospectus shall not incur any liability by reason of any non-compliance with, or contravention of, any of the requirements of this section, if—

- (a) as regards any matter not disclosed, he proves that he had no knowledge thereof ; or
- (b) he proves that the non-compliance or contravention arose from an honest mistake of fact on his part ; or
- (c) the non-compliance or contravention was in respect of matters which, in the opinion of the Court dealing with the case, were immaterial or were otherwise such as ought, in the opinion of that

Court, having regard to all the circumstances of the case, reasonably to be excused :

Provided that no director or other person shall incur any liability in respect of the failure to include in a prospectus a statement with respect to the matters specified in clause 18 of Schedule II, unless it is proved that he had knowledge of the matters not disclosed.

(5) This section shall not apply—

- (a) to the issue to existing members or debenture holders of a company of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant for shares or debentures will or will not have the right to renounce in favour of other persons ; or
- (b) to the issue of a prospectus or form of application relating to shares or debentures which are, or are to be, in all respects uniform with shares or debentures previously issued and for the time being dealt in or quoted on a recognised stock exchange notified in this behalf by the Central Government in the Official Gazette :

but, subject as aforesaid, this section shall apply to a prospectus or a form of application, whether issued on or with reference to the formation of a company or subsequently.

(6) Nothing in this section shall limit or diminish any liability which any person may incur under the general law or under this Act apart from this section.

**52. Expert's consent to issue of prospectus containing statement by him.**—(1) A prospectus inviting persons to subscribe for shares in or debentures of a company and including a statement purporting to be made by an expert shall not be issued, unless—

- (a) he has given his written consent to the issue thereof with the statement included in the form and context in which it is included, and has not withdrawn such consent before the delivery of a copy of the prospectus for registration ; and
- (b) a statement that he has given and has not withdrawn his consent as aforesaid appears in the prospectus.

(2) If any prospectus is issued in contravention of sub-section (1), the company, and every person who is knowingly a party to the issue thereof, shall be punishable with fine which may extend to five thousand rupees.

(3) In this section, the expression “expert” includes an engineer, a valuer, an accountant and any other person whose profession gives authority to a statement made by him.

**53. Registration of prospectus.**—(1) No prospectus shall be issued by or on behalf of a company or in relation to an intended company unless, on or before the date of its publication, there has been delivered to the Registrar for registration a copy thereof signed by every person who is named therein as a director or proposed director of the company or by his agent authorised in writing, and having endorsed thereon or attached thereto—

- (a) any consent to the issue of the prospectus required by section 52 from any person as an expert ; and

(b) in the case of a prospectus issued generally, also—

- (i) a copy of every contract required by clause 16 of Schedule II to be specified in the prospectus, or, in the case of a contract not reduced into writing, a memorandum giving full particulars thereof ; and
- (ii) where the persons making any report required by Part II of that Schedule have made therein, or have, without giving the reasons, indicated therein, any such adjustments as are mentioned in clause 32 of that Schedule, a written statement signed by those persons setting out the adjustments and giving the reasons therefor.

(2) Every prospectus shall, on the face of it,—

- (a) state that a copy has been delivered for registration as required by this section ; and
- (b) specify any documents required by this section to be endorsed on or attached to the copy so delivered, or refer to statements included in the prospectus which specify those documents.

(3) The Registrar shall not register a prospectus,—

- (a) unless it is dated and the copy thereof signed in the manner required by this section and unless further it has endorsed thereon or attached thereto the documents (if any) specified as aforesaid ; and
- (b) in case the prospectus names any person as the auditor, legal adviser, attorney, solicitor, banker or broker of the company or proposed company, unless also it is accompanied by the consent in writing of the person so named to act in the capacity stated.

(4) No prospectus shall be issued more than ninety days after the date on which a copy thereof is delivered for registration ; and if a prospectus is so issued, it shall be deemed to be a prospectus a copy of which has not been delivered under this section to the Registrar.

(5) If a prospectus is issued without a copy thereof being delivered under this section to the Registrar or without the copy so delivered having endorsed thereon or attached thereto the required consent or documents, the company, and every person who is knowingly a party to the issue of the prospectus, shall be punishable with fine which may extend to five thousand rupees.

**54. Terms of contract mentioned in prospectus or statement in lieu of prospectus, not to be varied.**—A company shall not, at any time, vary the terms of a contract referred to in the prospectus or statement in lieu of prospectus, except subject to the approval of the company in general meeting.

**55. Civil liability for mis-statements in prospectus.**—(1) Subject to the provisions of this section, where a prospectus invites persons to subscribe for shares in or debentures of a company, the following persons shall be liable to pay compensation to every person who subscribes for any shares or debentures on the faith of the prospectus for the loss or damage he may

have sustained by reason of any untrue statement included therein, that is to say,—

- (a) every person who is a director of the company at the time of the issue of the prospectus ;
- (b) every person who has authorised himself to be named and is named in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time ;
- (c) every person who is a promoter of the company ; and
- (d) every person who has authorised the issue of the prospectus :

Provided that where, under section 52, the consent of a person is required to the issue of a prospectus and he has given that consent, or where, under clause (b) of sub-section (3) of section 53, the consent of a person named in a prospectus is required and he has given that consent, he shall not, by reason of having given such consent, be liable under this sub-section as a person who has authorised the issue of the prospectus except in respect of an untrue statement, if any, purporting to be made by him as an expert.

(2) No person shall be liable under sub-section (1), if he proves—

- (a) that, having consented to become a director of the company, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent ; or
- (b) that the prospectus was issued without his knowledge or consent and that on becoming aware of its issue, he forthwith gave reasonable public notice that it was issued without his knowledge or consent ; or
- (c) that, after the issue of the prospectus and before allotment thereunder, he, on becoming aware of any untrue statement therein, withdrew his consent to the issue of the prospectus and gave reasonable public notice of the withdrawal and of the reason therefor ; or
- (d) that—
  - (i) as regards every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, he had reasonable ground to believe, and did up to the time of the allotment of the shares or debentures, as the case may be, believe, that the statement was true; and
  - (ii) as regards every untrue statement purporting to be a statement by an expert or contained in what purports to be a copy of or extract from a report or valuation of an expert, it was a correct and fair representation of the statement, or a correct copy of, or a correct and fair extract from, the report or valuation; and he had reasonable ground to believe, and did up to the time of the issue of the prospectus believe, that the person making the statement was competent to make it and that that person had given the consent required by section 52 to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for registration or to the defendant's knowledge, before allotment thereunder.

- (iii) as regards every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement, or a correct copy of, or a correct and fair extract from, the document :

Provided that this sub-section shall not apply in the case of a person liable, by reason of his having given a consent required of him by section 52, as a person who has authorised the issue of the prospectus in respect of an untrue statement purporting to be made by him as an expert.

(3) A person who, apart from this sub-section, would, under sub-section (1), be liable by reason of his having given a consent required of him by section 52, as a person who has authorised the issue of a prospectus in respect of an untrue statement purporting to be made by him as an expert, shall not be so liable, if he proves—

- (a) that, having given his consent under section 52 to the issue of the prospectus, he withdrew it in writing before delivery of a copy of the prospectus for registration; or
- (b) that, after delivery of a copy of the prospectus for registration and before allotment thereunder, he, on becoming aware of the untrue statement, withdrew his consent in writing and gave reasonable public notice of the withdrawal, and of the reason therefor ; or
- (c) that he was competent to make the statement and that he had reasonable ground to believe, and did up to the time of the allotment of the shares or debentures, as the case may be, believe, that the statement was true.

(4) Where—

- (a) the prospectus specifies the name of a person as a director of the company, or as having agreed to become a director thereof, and he has not consented to become a director, or has withdrawn his consent before the issue of the prospectus, and has not authorised or consented to the issue thereof ; or
- (b) the consent of a person is required under section 52 to the issue of the prospectus and he either has not given that consent or has withdrawn it before the issue of the prospectus ;

the directors of the company excluding those without whose knowledge or consent the prospectus was issued, and every other person who authorised the issue thereof, shall be liable to indemnify the person referred to in clause (a) or clause (b), as the case may be, against all damages, costs and expenses to which he may be made liable by reason of his name having been inserted in the prospectus or of the inclusion therein of a statement purporting to be made by him as an expert, as the case may be, or in defending himself against any suit or legal proceeding brought against him in respect thereof :

Provided that a person shall not be deemed for the purposes of this sub-section to have authorised the issue of a prospectus by reason only of his having given the consent required by section 52 to the inclusion therein of a statement purporting to be made by him as an expert.

(5) Every person who, by reason of his being a director or being named as a director or having agreed to become a director or by reason of his having authorised the issue of the prospectus, becomes liable to make any payment under this section, may recover contribution, as in cases of contract, from any other person who, if sued separately, would have been liable to make the same payment, unless the person who has become so liable was, and that other person was not, guilty of fraudulent misrepresentation.

(6) For the purposes of this section—

(a) the expression “promoter” means a promoter who was a party to the preparation of the prospectus or of the portion thereof containing the untrue statement, but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company ; and

(b) the expression “expert” has the same meaning as in section 52.

**56. Criminal liability for mis-statements in prospectus.**—(1) Where a prospectus issued after the commencement of this Act includes any untrue statement, any person who authorised the issue of the prospectus, shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to five thousand rupees, or with both, unless he proves either that the statement was immaterial or that he had reasonable ground to believe, and did, up to the time of the issue of the prospectus, believe, that the statement was true.

(2) A person shall not be deemed for the purposes of this section to have authorised the issue of a prospectus by reason only of his having given—

(a) the consent required by section 52 to the inclusion therein of a statement purporting to be made by him as an expert, or

(b) the consent required by clause (b) of sub-section (3) of section 53.

**57. Document containing offer of shares or debentures for sale to be deemed prospectus.**—(1) Where a company allots or agrees to allot any shares in or debentures of the company with a view to all or any of those shares or debentures being offered for sale to the public, any document by which the offer for sale to the public is made shall, for all purposes, be deemed to be a prospectus issued by the company; and all enactments and rules of law as to the contents of prospectuses and as to liability in respect of statements in and omissions from prospectuses, or otherwise relating to prospectuses, shall apply with the modifications specified in sub-sections (3), (4) and (5), and have effect accordingly, as if the shares or debentures had been offered to the public for subscription and as if persons accepting the offer in respect of any shares or debentures, were subscribers for those shares or debentures, but without prejudice to the liability, if any, of the persons by whom the offer is made, in respect of mis-statements contained in the document or otherwise in respect thereof.

(2) For the purposes of this Act, it shall, unless the contrary is proved, be evidence that an allotment of, or an agreement to allot, shares or debentures was made with a view to the shares or debentures being offered for sale to the public if it is shown—

(a) that an offer of the shares or debentures or of any of them for sale to the public was made within six months after the allotment or agreement to allot ; or

(b) that at the date when the offer was made the whole consideration to be received by the company in respect of the shares or debentures had not been so received.

(3) Section 51 as applied by this section shall have effect as if it required a prospectus to state in addition to the matters required by that section to be stated in a prospectus—

(a) the net amount of the consideration received or to be received by the company in respect of the shares or debentures to which the offer relates ; and

(b) the place and time at which the contract under which the said shares or debentures have been or are to be allotted may be inspected.

(4) Section 51 as applied by this section shall have effect as though the persons making the offer were persons named in a prospectus as directors of a company.

(5) Where a person making an offer to which this section relates is a company or a firm, it shall be sufficient if the document referred to in sub-section (1) is signed on behalf of the company or firm by two directors of the company or by not less than one-half of the partners, as the case may be; and any such director or partner may sign by his agent authorised in writing.

**58. Interpretation of provisions relating to prospectuses.**—For the purposes of the foregoing provisions of this Part—

(a) a statement included in a prospectus shall be deemed to be untrue, if the statement is misleading in the form and context in which it is included ;

(b) a statement shall be deemed to be included in a prospectus if it is contained in any report or memorandum appearing on the face thereof or is by reference incorporated therein or issued therewith ; and

(c) where the omission from a prospectus of any matter which is required to be stated or set out therein under the provisions of section 51 and Schedule II is calculated to mislead, the prospectus shall be deemed, in respect of such omission, to be a prospectus in which an untrue statement is included.

**59. Newspaper advertisements of prospectus.**—Where any prospectus is published as a newspaper advertisement, it shall not be necessary in the advertisement to specify the contents of the memorandum or the signatories thereto, or the number of shares subscribed for by them.

**60. Restriction on canvassing of shares or debentures.**—(1) No person shall go from house to house offering to the public or any member of the public for subscription or purchase, any shares or debentures of a company or body corporate, or of any body or person purporting to be a company or body corporate, whether actually one within the meaning of this Act or not.

(2) In sub-section (1), “house” does not include an office used for business purposes ; and the expression “offering” includes an invitation to make an offer.

(3) Any person acting in contravention of sub-section (1) shall be punishable with fine which may extend to five hundred rupees.



**61. Construction of references to offering shares or debentures to the public etc.**—(1) Any reference in this Act or in the articles of a company to offering shares or debentures to the public shall, subject to any provision to the contrary contained therein and subject also to the provisions of sub-sections (3) and (4), be construed as including a reference to offering them to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner.

(2) Any reference in this Act or in the articles of a company to invitations to the public to subscribe for shares or debentures shall, subject as aforesaid, be construed as including a reference to invitations to subscribe for them extended to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner.

(3) No offer or invitation shall be treated as made to the public by virtue of sub-section (1) or sub-section (2), as the case may be, if the offer or invitation can properly be regarded, in all the circumstances—

(a) as not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation; or

(b) otherwise as being a domestic concern of the persons making and receiving it.

(4) Without prejudice to the generality of sub-section (3), a provision in a company's articles prohibiting invitations to the public to subscribe for shares or debentures shall not be taken as prohibiting the making to members or debenture holders of an invitation which can properly be regarded in the manner set forth in that sub-section.

(5) The provisions of this Act relating to private companies shall be construed in accordance with the provisions contained in sub-sections (1) to (4).

**62. Penalty for fraudulently inducing persons to invest money.**—

(1) Any person who, by knowingly or recklessly making any statement, promise or forecast which is false, deceptive or misleading, or by any dishonest concealment of material facts, induces or attempts to induce another person to enter into, or to offer to enter into—

(a) any agreement for or with a view to, acquiring, disposing of, subscribing for, or underwriting, shares or debentures ; or

(b) any agreement the purpose or pretended purpose of which is to secure a profit to any of the parties from the yield of shares or debentures or by reference to fluctuations in the value of shares or debentures ;

shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to ten thousand rupees, or with both.

(2) Any person guilty of conspiracy to commit an offence under sub-section (1) shall be punishable as if he had committed the offence.

*Allotment*

**63. Prohibition of allotment unless minimum subscription received.**—(1) No allotment shall be made of any share capital of a company offered to the public for subscription, unless the amount stated in the prospectus as the minimum amount which, in the opinion of the directors, must be raised by the issue of share capital in order to provide for the matters specified in clause 5 of Schedule II has been subscribed, and the sum payable on application for the amount so stated has been paid to and received by the company whether in cash or by a cheque which has been paid.

(2) The amount so stated in the prospectus shall be reckoned exclusively of any amount payable otherwise than in money and is in this Act referred to as "the minimum subscription".

(3) The amount payable on application on each share shall not be less than five per cent of the nominal amount of the share.

(4) All moneys received from applicants for shares shall be deposited and kept deposited in a Scheduled Bank until they are returned in accordance with the provisions of sub-section (5) or until the certificate to commence business is obtained under section 142.

In the event of any contravention of the provisions of this sub-section every promoter, director or other person who is knowingly responsible for such contravention shall be punishable with fine which may extend to five thousand rupees.

(5) If the conditions aforesaid have not been complied with on the expiration of ninety days after the first issue of the prospectus, all moneys received from applicants for shares shall be forthwith repaid to them without interest, and, if any such money is not so repaid within one hundred days after the issue of the prospectus, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of five per cent per annum from the expiration of the one hundredth day :

Provided that a director shall not be so liable if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.

(6) Any condition requiring or binding any applicant for shares to waive compliance with any requirement of this section shall be void.

(7) This section, except sub-section (3) thereof, shall not apply to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription.

**64. Prohibition of allotment in certain cases unless statement in lieu of prospectus delivered to Registrar.**—(1) A company having a share capital which does not issue a prospectus on or with reference to its formation, or which has issued such a prospectus but has not proceeded to allot any of the shares offered to the public for subscription, shall not allot any of its shares or debentures unless at least three days before the first allotment of either shares or debentures, there has been delivered to the Registrar for registration a statement in lieu of prospectus signed by every person who is named therein as a director or a proposed director of the company or by his agent authorised in writing, in the form and containing the particulars set out in Part I of Schedule III and, in the cases mentioned in Part II of that

Schedule, setting out the reports specified therein, and the said Parts I and II shall have effect subject to the provisions contained in Part III of that Schedule.

(2) Every statement in lieu of prospectus delivered under sub-section (1) shall, where the persons making any such report as aforesaid have made therein or have, without giving the reasons, indicated therein any such adjustments as are mentioned in clause 5 of Schedule III, have endorsed thereon or attached thereto a written statement signed by those persons setting out the adjustments and giving the reasons therefor.

(3) This section shall not apply to a private company.

(4) If a company acts in contravention of sub-section (1) or (2), the company, and every director of the company who is in default, shall be punishable with fine which may extend to one thousand rupees.

(5) Where a statement in lieu of prospectus delivered to the Registrar under sub-section (1) includes any untrue statement, any person who authorises the delivery of the statement in lieu of prospectus for registration shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to five thousand rupees or with both, unless he proves either that the untrue statement was immaterial or that he had reasonable ground to believe, and did, up to the time of the delivery for registration of the statement in lieu of prospectus, believe, that the untrue statement was true.

(6) For the purposes of this section—

(a) a statement included in a statement in lieu of prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included ;

(b) a statement shall be deemed to be included in a statement in lieu of prospectus if it is contained in any report or memorandum appearing on the face thereof or is by reference incorporated therein; and

(c) where the omission from a statement in lieu of prospectus of any matter which is required to be stated or set out therein under the provisions of Schedule III is calculated to mislead, the statement in lieu of prospectus shall be deemed, in respect of such omission, to be a statement in lieu of prospectus in which an untrue statement is included.

**65. Effect of irregular allotment.**—(1) An allotment made by a company to an applicant in contravention of the provisions of section 63 or 64 shall be voidable at the instance of the applicant—

(a) within two months after the holding of the statutory meeting of the company, and not later, or

(b) in any case where the company is not required to hold a statutory meeting or where the allotment is made after the holding of the statutory meeting, within two months after the date of the allotment, and not later.

(2) The allotment shall be voidable as aforesaid, notwithstanding that the company is in course of being wound up.

(3) If any director of a company knowingly contravenes or permits or authorises the contravention of any of the provisions of section 63 or 64 with respect to allotment, he shall be liable to compensate the company and the allottee respectively for any loss, damages or costs which the company or the allottee may have sustained or incurred thereby :

Provided that proceedings to recover any such loss, damages or costs shall not be commenced after the expiration of two years from the date of the allotment.

**66. Applications for, and allotment of, shares and debentures.—(1)**

(a) No allotment shall be made of any shares in or debentures of a company in pursuance of a prospectus issued generally and no proceedings shall be taken on applications made in pursuance of a prospectus so issued, until the beginning of the fifth day after that on which the prospectus is first so issued or such later time, if any, as may be specified in the prospectus :

Provided that where, after a prospectus is first issued generally, a public notice is given by some person responsible under section 55 for the prospectus which has the effect of excluding, limiting or diminishing his responsibility, no allotment shall be made before the beginning of the fifth day after that on which such public notice is first given.

(b) Nothing in the foregoing proviso shall be deemed to exclude, limit or diminish any liability that might be incurred in the case referred to therein, under the general law or this Act.

(c) The beginning of the fifth day or such later time as is mentioned in the first paragraph of clause (a) or the beginning of the fifth day mentioned in the second paragraph of that clause, as the case may be, is hereinafter in this Act referred to as "the time of the opening of the subscription lists".

(2) In sub-section (1), the reference to the day on which the prospectus is first issued generally shall be construed as referring to the day on which it is first so issued as a newspaper advertisement :

Provided that, if it is not so issued as a newspaper advertisement before the fifth day after that on which it is first so issued in any other manner, the said reference shall be construed as referring to the day on which it is first so issued in any manner.

(3) The validity of an allotment shall not be affected by any contravention of the foregoing provisions of this section; but, in the event of any such contravention, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five thousand rupees.

(4) In the application of this section to a prospectus offering shares or debentures for sale, sub-sections (1) to (3) shall have effect with the substitution of references to sale for references to allotment, and with the substitution for the reference to the company and every officer of the company who is in default of a reference to any person by or through whom the offer is made and who is knowingly guilty of or knowingly authorises or permits, the contravention.

(5) An application for shares in, or debentures of, a company, which is made in pursuance of a prospectus issued generally shall not be revocable until after the expiration of the fifth day after the time of the opening of the subscription lists, or the giving before the expiration of the said fifth day, by some person responsible under section 55 for the prospectus of a public

notice having the effect under that section of excluding, limiting or diminishing the responsibility of the person giving it.

(6) Where a prospectus is issued generally, the company shall announce the day on which the subscription lists are closed and the allotment of share or debentures shall be made and notices of such allotment issued not later than the tenth day after such day.

**67. Allotment of shares and debentures to be dealt in on stock exchange.**—(1) Where a prospectus, whether issued generally or not, states that application has been or will be made for permission for the shares or debentures offered thereby to be dealt in on any stock exchange, any allotment made on an application in pursuance of the prospectus shall, whenever made, be void if the permission has not been applied for before the tenth day after the first issue of the prospectus or if the permission has not been granted before the expiration of three weeks from the date of the closing of the subscription lists or such longer period not exceeding six weeks as may, within the said three weeks, be notified to the applicant for permission by or on behalf of the stock exchange.

(2) Where the permission has not been applied for as aforesaid, or has not been granted as aforesaid, the company shall forthwith repay without interest all moneys received from applicants in pursuance of the prospectus, and, if any such money is not repaid within eight days after the company becomes liable to repay it, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of five per cent per annum from the expiration of the eighth day :

Provided that a director shall not be liable if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.

(3) All moneys received as aforesaid shall be kept in a separate bank account maintained with a Scheduled Bank so long as the company may become liable to repay it under sub-section (2) ; and if default is made in complying with this sub-section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five thousand rupees.

(4) Any condition requiring or binding any applicant for shares or debentures to waive compliance with any of the requirements of this section shall be void.

(5) This section shall have effect—

(a) in relation to any shares or debentures agreed to be taken by a person underwriting an offer thereof by a prospectus, as if he had applied therefor in pursuance of the prospectus ; and

(b) in relation to a prospectus offering shares for sale, with the following modifications, namely,—

(i) references to sale shall be substituted for references to allotment ;

(ii) the persons by whom the offer is made, and not the company shall be liable under sub-section (2) to repay money received from applicants, and references to the company's liability under that sub-section shall be construed accordingly ; and

- (iii) for the reference in sub-section (3) to the company and every officer of the company who is in default, there shall be substituted a reference to any person by or through whom the offer is made and who is knowingly guilty of, or knowingly authorises or permits, the default.

(6) The Central Government may, from time to time, by notification in the Official Gazette, prescribe what stock exchanges shall be recognised as such for the purposes of this section; and any application to, or the grant of permission by, any stock exchange not so recognised shall not be deemed to be a compliance with this section.

**68. Manner of reckoning fifth, eighth and tenth days in sections 66 and 67.**—In reckoning for the purposes of sections 66 and 67, the fifth day, the eighth day, or the tenth day after another day, any intervening day which is a public holiday under the Negotiable Instruments Act, 1881 (XXVI of 1881), shall be disregarded, and if the fifth, eighth, or tenth day (as so reckoned) is itself such a public holiday, there shall for the said purposes be substituted the first day thereafter which is not such a holiday.

**69. Return as to allotments.**—(1) Whenever a company having a share capital makes any allotment of its shares, the company shall, within one month thereafter,—

- (a) file with the Registrar a return of the allotments, stating the number and nominal amount of the shares comprised in the allotment, the names, addresses and descriptions of the allottees, and the amount, if any, paid or due and payable on each share ;
- (b) in the case of shares (not being bonus shares) allotted as fully or partly paid up otherwise than in cash, produce for the inspection and examination of the Registrar a contract in writing constituting the title of the allottee to the allotment together with any contract of sale, or for services or other consideration in respect of which that allotment was made, such contracts being duly stamped, and file with the Registrar copies verified in the prescribed manner of all such contracts and a return stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted;
- (c) in the case of bonus shares, that is to say, shares allotted as fully or partly paid up, whether out of accumulated profits or otherwise, file with the Registrar a return stating the number and nominal amount of shares so allotted and the extent to which they are to be treated as paid up.

(2) Where a contract such as is mentioned in clause (b) of sub-section (1), is not reduced to writing, the company shall, within one month after the allotment, file with the Registrar the prescribed particulars of the contract stamped with the same stamp duty as would have been payable if the contract had been reduced to writing, and those particulars shall be deemed to be an instrument within the meaning of the Indian Stamp Act, 1899 (II of 1899), and the Registrar may, as a condition of filing the particulars, require that the duty payable thereon be adjudicated under section 31 of that Act.

(3) If the Registrar is satisfied that in the circumstances of any particular case the period of one month specified in sub-sections (1) and (2) for

compliance with the requirements of this section is inadequate, he may extend that period as he thinks fit, and, if he does so, the provisions of sub-sections (1) and (2) shall have effect in that particular case as if for the said period of one month the extended period allowed by the Registrar were substituted.

(4) If default is made in complying with this section, every officer of the company who is in default shall be punishable with fine which may extend to five hundred rupees for every day during which the default continues :

Provided that, in case of default in filing with the Registrar any document required to be filed by this section, within the time specified therein, the company or any officer liable for the default, may apply to the Court for relief, and the Court, if satisfied that the omission to file the document was accidental or due to inadvertence or that on other grounds it is just and equitable to grant relief, may make an order extending the time for the filing of the document for such period as the Court may think proper.

(5) Nothing in this section shall apply to the issue and allotment by a company of shares which under the provisions of its articles were forfeited for non-payment of calls.

#### *Commissions and Discounts*

**70. Power to pay certain commissions and prohibition of payment of all other commissions, discounts, etc.**—(1) A company may pay a commission to any person in consideration of—

- (a) his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company, or
- (b) his procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company,

if the following conditions are fulfilled, namely :—

- (i) the payment of the commission is authorised by the articles ;
- (ii) the commission paid or agreed to be paid does not exceed ten per cent of the price at which the shares are issued or the amount or rate authorised by the articles, whichever is less ;
- (iii) the amount or rate per cent of the commission paid or agreed to be paid is—

in the case of shares offered to the public for subscription, disclosed in the prospectus ; or

in the case of shares not offered to the public for subscription, disclosed in the statement in lieu of prospectus, or in a statement in the prescribed form signed in like manner as a statement in lieu of prospectus and filed before the payment of the commission with the Registrar and, where a circular or notice, not being a prospectus inviting subscription for the shares, is issued, also disclosed in that circular or notice ; and

- (iv) The number of shares which persons have agreed for a commission to subscribe absolutely or conditionally is disclosed in the manner aforesaid.

(2) Save as aforesaid and save as provided in section 73 no company shall allot any of its shares or apply any of its capital moneys, either directly or indirectly, in payment of any commission, discount or allowance, to any person in consideration of—

- (a) his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company, or
  - (b) his procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, whether the shares or money be so allotted or applied by being added to the purchase money of any property acquired by the company or to the contract price of any work to be executed for the company, or the money be paid out of the nominal purchase money or contract price, or otherwise.
- (3) Nothing in this section shall affect the power of any company to pay such brokerage as it has heretofore been lawful for a company to pay
- (4) A vendor to, promoter of, or other person who receives payment in shares or money from, a company shall have and shall be deemed always to have had power to apply any part of the shares or money so received in payment of any commission, the payment of which, if made directly by the company would have been legal under this section.
- (5) If default is made in complying with the provisions of this section the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees.

**71. Restrictions on purchase by company, or loans by company for purchase, of its own or its holding company's shares.—**(1) No company shall have power to buy its own shares or the shares of its holding company, unless the consequent reduction of capital is effected and sanctioned in the manner provided by sections 93 to 97.

(2) No public company, and no private company which is a subsidiary of a public company, shall give, whether directly or indirectly, and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of or in connection with a purchase or subscription made or to be made by any person of or for any shares in the company or in its holding company :

Provided that nothing in this section shall be taken to prohibit—

- (a) the lending of money by a banking company in the ordinary course of its business ; or
- (b) the provision by a company, in accordance with any scheme for the time being in force, of money for the purchase of, or subscription for, fully-paid shares in the company or its holding company, being a purchase or subscription by trustees of or for shares to be held by or for the benefit of employees of the company, including any director holding a salaried office or employment in the company ; or
- (c) the making by a company of loans, within the limits laid down in sub-section (3), to persons, other than directors, managing agents or managers, *bonafide* in the employment of the company, with a view to enabling those persons to purchase or subscribe



for fully-paid shares in the company or its holding company to be held by themselves by way of beneficial ownership.

(3) No loan made to any person in pursuance of clause (c) of the foregoing proviso shall exceed in amount his salary or wages at that time for a period of three months.

(4) If a company acts in contravention of sub-sections (1) to (3), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to one thousand rupees.

(5) Nothing in this section shall affect the right of a company to redeem any shares issued under section 74 or under any corresponding provision in any previous companies law.

*Issue of shares at premium and discount*

**72. Application of premiums received on issue of shares.—**

(1) Where a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount or value of the premiums on those shares shall be transferred to an account, to be called "the share premium account"; and the provisions of this Act relating to the reduction of the share capital of a company shall, except as provided in this section, apply as if the share premium account were paid up share capital of the company.

(2) The share premium account may, notwithstanding anything in sub-section (1), be applied by the company—

- (a) in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares;
- (b) in writing off the preliminary expenses of the company;
- (c) in writing off the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company; or
- (d) in providing for the premium payable on the redemption of any redeemable preference shares or of any debentures of the company.

(3) Where a company has, before the commencement of this Act, issued any shares at a premium, this section shall apply as if the shares had been issued after the commencement of this Act :

Provided that any part of the premiums which has been so applied that it does not at the commencement of this Act form an identifiable part of the company's reserves within the meaning of Schedule VI, shall be disregarded in determining the sum to be included in the share premium account.

**73. Power to issue shares at a discount.—**(1) A company may issue at a discount shares in the company of a class already issued, if the following conditions are fulfilled, namely :—

- (i) the issue of the shares at a discount is authorised by a resolution passed by the company in general meeting, and sanctioned by the Court ;
- (ii) the resolution specifies the maximum rate of discount (no exceeding ten per cent in any case) at which the shares are to be issued ;

(iii) not less than one year has at the date of the issue elapsed since the date on which the company was entitled to commence business ; and

(iv) the shares to be issued at a discount are issued within two months after the date on which the issue is sanctioned by the Court or within such extended time as the Court may allow.

(2) Where a company has passed a resolution authorising the issue of shares at a discount, it may apply to the Court for an order sanctioning the issue; and on any such application, the Court, if, having regard to all the circumstances of the case, it thinks proper so to do, may make an order sanctioning the issue on such terms and conditions as it thinks fit.

(3) Every prospectus relating to the issue of the shares shall contain particulars of the discount allowed on the issue of the shares or of so much of that discount as has not been written off at the date of the issue of the prospectus.

If default is made in complying with this sub-section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty rupees.

**74. Power to issue redeemable preference shares.**—(1) Subject to the provisions of this section, a company limited by shares may, if so authorised by its articles, issue preference shares which are, or at the option of the company are to be liable, to be redeemed :

Provided that—

(a) no such shares shall be redeemed except out of profits of the company which would otherwise be available for dividend or out of the proceeds of a fresh issue of shares made for the purposes of the redemption or out of the sale proceeds of any property of the company ;

(b) no such shares shall be redeemed unless they are fully paid ;

(c) the premium, if any, payable on redemption shall have been provided for out of the profits of the company or out of the company's share premium account, before the shares are redeemed ;

(d) where any such shares are redeemed otherwise than out of the proceeds of a fresh issue, there shall, out of profits which would otherwise have been available for dividend, be transferred to a reserve fund, to be called " the capital redemption reserve fund", a sum equal to the nominal amount of the shares redeemed; and the provisions of this Act relating to the reduction of the share capital of a company shall, except as provided in this section, apply as if the capital redemption reserve fund were paid-up share capital of the company.

(2) Subject to the provisions of this section, the redemption of preference shares thereunder may be effected on such terms and in such manner as may be provided by the articles of the company.

(3) The redemption of preference shares under this section by a company shall not be taken as reducing the amount of its authorised share capital.

(4) Where in pursuance of this section, a company has redeemed or is about to redeem any preference shares, it shall have power to issue shares up to the nominal amount of the shares redeemed or to be redeemed as if those shares had never been issued; and accordingly the share capital of the company shall not, for the purpose of calculating the fees payable under section 560 be deemed to be increased by the issue of shares in pursuance of this sub-section :

Provided that, where new shares are issued before the redemption of the old shares, the new shares shall not, so far as relates to stamp duty, be deemed to have been issued in pursuance of this sub-section unless the old shares are redeemed within one month after the issue of the new shares.

(5) The capital redemption reserve fund may, notwithstanding anything in this section, be applied by the company, in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares.

(6) If a company fails to comply with the provisions of this section the company, and every officer of the company who is in default, shall be punishable with fine which may extend to one thousand rupees.

*Further issues of Capital*

**75. Further issue of capital.**—(1) Where the subscribed capital of a company is increased by the issue of further shares, then, subject to any directions to the contrary which may be given by the company in general meeting, and subject only to those directions—

- (a) such shares shall be offered to the persons who, at the date of the offer, are holders of the equity shares of the company, in proportion, as nearly as circumstances admit, to the capital paid up on those shares at that date ;
- (b) the offer aforesaid shall be made by notice specifying the number of shares offered and limiting a time being not less than ten days from the date of the offer within which the offer, if not accepted, will be deemed to have been declined ;
- (c) unless the articles of the company otherwise provide, the offer aforesaid shall be deemed to include a right exercisable by the person concerned to renounce the shares offered to him or any of them in favour of any other person ; and the notice referred to in clause (b) shall contain a statement of this right ;
- (d) after the expiration of the time specified in the notice aforesaid, or on receipt of earlier intimation from the person to whom such notice is given that he declines to accept the shares offered, the directors may dispose of them in such manner as they think most beneficial to the company ;
- (e) where by reason of the ratio which the number of the new shares issued bears to the number of the equity shares of the company, some of the holders of the equity shares of the company are not entitled to the offer of even one of the new shares and in consequence of this any shares cannot be offered in pursuance of clause (a), the directors may dispose of such shares in such manner as they think most beneficial to the company.

*Explanation.*—In this sub-section, “equity share capital” and “equity shares” have the same meanings as in section 79.

(2) Nothing in clause (c) of sub-section (1) shall be deemed—

- (a) to extend the time within which the offer should be accepted, or
- (b) to authorise any person to exercise the right of renunciation for a second time, on the ground that the person in whose favour the renunciation was first made has declined to take the shares comprised in the renunciation.

(3) This section shall not apply to a private company.

## PART IV

### SHARE CAPITAL AND DEBENTURES

#### *Nature and Numbering of Shares*

**76. Nature of shares.**—The shares or other interest of any member in a company shall be movable property, transferable in the manner provided by the articles of the company.

**77. Numbering of shares.**—Each share in a company having a share capital shall be distinguished by its appropriate number:

Provided that, if at any time all the issued shares in a company, or all the issued shares therein of a particular class, are fully paid up and rank *pari passu* for all purposes, none of those shares need thereafter have a distinguishing number so long as it remains fully paid up and ranks *pari passu* for all purposes with all shares of the same class for the time being issued and fully paid up.

#### *Certificate of shares*

**78. Certificate of shares.**—A certificate, under the common seal of the company, specifying any shares held by any member, shall be *prima facie* evidence of the title of the member to such shares.

#### *Kinds of share capital*

**79. Two kinds of share capital.**—(1) The share capital of a company formed after the commencement of this Act or issued after such commencement shall be of two kinds only, namely :—

- (a) equity share capital ; and
- (b) preference share capital.

(2) “preference share capital” means that part of the issued share capital of a company which fulfils, or is declared by the Central Government substantially to fulfil, the following two requirements, namely :—

- (a) that as respects dividends, it carries or will carry no right to participate beyond a fixed amount ; and
- (b) that as respects capital, it carries or will carry no right to participate beyond the amount paid up together with any fixed premium or premium on any fixed scale, as specified in the memorandum or articles of the company.

(3) "equity share capital" means all share capital which is not preference share capital.

(4) The expressions "preference share" and "equity share" shall be construed accordingly.

**80. Voting rights.**—(1) Every holder of any equity share capital shall have a right to vote on every resolution placed before the company, and his voting right shall, subject to the provisions of this Act, be in proportion to his share of the paid up equity capital of the company.

(2) (a) The holder of any preference share capital shall not, save as provided in clause (b), have a right to vote on any resolution placed before the company, which does not directly affect the rights attached to his preference shares.

*Explanation.*—Any resolution for winding up the company or for the reduction of its share capital shall be deemed directly to affect the rights attached to preference shares within the meaning of this clause.

(b) The holder of any preference share capital shall be entitled to vote on every resolution placed before a company at any meeting held during any period in which the dividend due on the preference shares or any part of such dividend remains unpaid, in the case of cumulative preference shares for a period of not less than one year, and in the case of non-cumulative preference shares for a period of not less than two consecutive years, from the date on which the dividend fell due.

*Explanation.*—"Cumulative preference share" means a share in respect of which any dividend or part of any dividend which remains unpaid during one year remains due and is payable in the next or in any succeeding year; and "non-cumulative preference share" means any other preference share.

(c) Where any preference shareholder has a right to vote on any resolution in accordance with the provisions of this sub-section, his voting right shall, subject to the provisions of this Act, be in the same proportion as the capital paid up in respect of his preference shares, bears to the paid up equity capital of the company.

**81. Issue of shares with disproportionate rights to be prohibited.**—No company formed after the commencement of this Act or issuing any share capital after such commencement shall, without obtaining the previous consent of the Central Government in this behalf, issue any shares (other than preference shares) which carry voting rights or rights in the company as to dividend, capital or otherwise which are disproportionate to the rights attaching to the holders of other shares, not being preference shares.

**82. Termination of disproportionately excessive voting rights in existing companies.**—(1) If any existing company has issued before the commencement of this Act any shares, by whatever name called, with voting rights in excess of the voting rights attaching to equity shares under sub-section (1) of section 80, the company shall, within a period of three years from the commencement of this Act, bring the voting rights in respect of the shares first mentioned into conformity with the voting rights attached to equity shares under sub-section (1) of section 80 aforesaid.

(2) Before the voting rights are brought into such conformity, the holders of the shares in question shall not exercise in respect thereof voting rights in excess of what would have been exercisable by them if the capital paid up on their shares had been equity share capital, in respect of the following resolutions placed before the company, namely :—

- (a) any resolution relating to the appointment or re-appointment of a managing agent or to any variation in a managing agency agreement ;
- (b) any resolution relating to the appointment of buying or selling agents ;
- (c) any resolution relating to the grant of a loan, or the giving of a guarantee or any other financial assistance, to any other company having the same managing agent or a managing agent who is an associate of that managing agent.

(3) The Central Government may exempt any company from the requirements of sub-sections (1) and (2), wholly or in part, if, in its opinion, there are sufficient grounds for granting the exemption.

**83. Savings.**—Nothing in sections 79 to 82 shall,—

- (a) in the case of any shares issued before the commencement of this Act, affect any voting rights attached to the shares save as otherwise provided in section 82, or any right attached to the shares as to dividend, capital or otherwise, or
- (b) apply to a private company unless it is a subsidiary of a public company.

*Miscellaneous provisions as to share capital*

**84. Calls on shares of same class to be made on uniform basis.**—Where after the commencement of this Act, any calls for further share capital are made on shares, such calls shall be made on a uniform basis on all shares falling under the same class.

**85. Power of company to accept unpaid share capital, although not called up.**—A company may, if so authorised by its articles,—

- (a) accept from any member the whole or a part of the amount remaining unpaid on any shares held by him although no part of that amount has been called up ; or
- (b) pay dividends in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others.

**86. Power of limited company to alter its share capital.**—(1) A company having a share capital, may, if so authorised by its articles, alter the conditions of its memorandum as follows, that is to say, it may—

- (a) increase its share capital by such amount as it thinks expedient either by issuing new shares or by adding to the amount paid up on its existing shares from the accumulated profits, reserves or capital moneys of the company ;
- (b) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares ;
- (c) convert all or any of its fully paid up shares into stock, and re-convert that stock into fully paid up shares of any denomination ;

- (d) sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so however, that in the sub-division the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived ;
  - (e) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.
- (2) The powers conferred by this section shall be exercised by the company in general meeting and shall not require to be confirmed by the Court.

(3) A cancellation of shares in pursuance of this section shall not be deemed to be a reduction of share capital within the meaning of this Act.

**87. Notice to Registrar of consolidation of share capital, conversion of shares into stock, etc.—**(1) If a company having a share capital has —

- (a) consolidated and divided its share capital into shares of larger amount than its existing shares ; or
- (b) converted any shares into stock ; or
- (c) re-converted any stock into shares ; or
- (d) sub-divided its shares or any of them ; or
- (e) redeemed any redeemable preference shares ; or
- (f) cancelled any shares, otherwise than in connection with a reduction of share capital under sections 93 to 97 ;

the company shall within one month after doing so, give notice thereof to the Registrar specifying, as the case may be, the shares consolidated, divided, converted, sub-divided, redeemed or cancelled, or the stock re-converted.

(2) The Registrar shall thereupon record the notice, and make any alterations which may be necessary in the company's memorandum or articles or both.

(3) If default is made in complying with sub-section (1), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty rupees for every day during which the default continues.

**88. Effect of conversion of shares into stock.**—Where a company having a share capital has converted any of its shares into stock, and given notice of the conversion to the Registrar, all the provisions of this Act which are applicable to shares only, shall cease to apply as to so much of the share capital as is converted into stock.

**89. Power of company not having a share capital to increase its membership.**—A company not having a share capital may, if so authorised by its articles, by ordinary resolution, increase the number of its members to such extent as it thinks expedient.

**90. Notice of increase of share capital or of members.**—(1) Where a company having a share capital, whether its shares have or have not been converted into stock, has increased its share capital beyond the registered capital, and where a company not having a share capital has increased the number of its members beyond the registered number, it shall file with the Registrar, notice of the increase of capital or of members within fifteen days after the passing of the resolution authorising the increase ; and the Registrar shall record the increase and also make any alterations which may be necessary in the company's memorandum or articles or both.

(2) The notice to be given as aforesaid shall include particulars of the classes of shares affected and the conditions, if any, subject to which the new shares have been or are to be issued.

(3) If default is made in complying with this section, the company and every officer of the company who is in default, shall be punishable with fine which may extend to fifty rupees for every day during which the default continues.

**91. Power of unlimited company to provide for reserve share capital on re-registration.**—An unlimited company having a share capital may, by its resolution for registration as a limited company in pursuance of this Act,—

(a) increase the nominal amount of its share capital by increasing the nominal amount of each of its shares, but subject to the condition that no part of the increased capital shall be capable of being called up except in the event and for the purposes of the company being wound up ;

(b) provide that a specified portion of its uncalled share capital shall not be capable of being called up except in the event and for the purposes of the company being wound up.

**92. Reserve liability of limited company.**—A limited company may, by special resolution, determine that any portion of its share capital which has not been already called up shall not be capable of being called up, except in the event and for the purposes of the company being wound up, and thereupon that portion of its share capital shall not be capable of being called up except in that event and for those purposes.

### *Reduction of Share Capital*

**93. Special resolution for reduction of share capital.**—(1) Subject to confirmation by the Court, a company limited by shares or a company limited by guarantee and having a share capital, may if so authorised by its articles, by special resolution, reduce its share capital in any way; and in particular and without prejudice to the generality of the foregoing power, may —

(a) extinguish or reduce the liability on any of its shares in respect of share capital not paid up ; or

(b) either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share capital which is lost, or is unrepresented by available assets ; or



- (c) either with or without extinguishing or reducing liability on any of its shares, pay off any paid-up share capital which is in excess of the wants of the company ;

and may, if and so far as is necessary, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.

- (2) A special resolution under this section is in this Act referred to as "a resolution for reducing share capital".

**94. Application to Court for confirming order, objections by creditors, and settlement of list of objecting creditors.**—(1) Where a company has passed a resolution for reducing share capital, it may apply, by petition, to the Court for an order confirming the reduction.

(2) Where the proposed reduction of share capital involves either diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, and in any other case if the Court so directs, the following provisions shall have effect, subject to the provisions of sub-section (3) :—

- (a) every creditor of the company who at the date fixed by the Court is entitled to any debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company, shall be entitled to object to the reduction ;
- (b) the Court shall settle a list of creditors so entitled to object, and for that purpose shall ascertain, as far as possible without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims, and may publish notices fixing a day or days within which creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting to the reduction ;
- (c) where a creditor entered on the list whose debt or claim is not discharged or has not determined does not consent to the reduction, the Court may, if it thinks fit, dispense with the consent of that creditor, on the company securing payment of his debt or claim by appropriating, as the Court may direct, the following amount :—
- (i) if the company admits the full amount of the debt or claim, or, though not admitting it, is willing to provide for it, then, the full amount of the debt or claim ;
- (ii) if the company does not admit, and is not willing to provide for, the full amount of the debt or claim, or if the amount is contingent or not ascertained, then, an amount fixed by the Court after the like inquiry and adjudication as if the company were being wound up by the Court.

(3) Where a proposed reduction of share capital involves either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, the Court may, if, having regard to any special circumstances of the case, it thinks proper so to do, direct that the provisions of sub-section (2) shall not apply as regards any class or any classes of creditors.

**95. Order confirming reduction and powers of Court on making such order.**—(1) The Court, if satisfied with respect to every creditor of the company who under section 94 is entitled to object to the reduction, that either his consent to the reduction has been obtained or his debt or claim has been discharged or has determined, or has been secured, may make an order confirming the reduction on such terms and conditions as it thinks fit.

(2) Where the Court makes any such order, it may—

(a) if for any special reason it thinks proper so to do, make an order directing that the company shall, during such period, commencing on or at any time after the date of the order, as is specified in the order, add to its name as the last words thereof the words “and reduced”; and

(b) make an order requiring the company to publish as the Court directs the reasons for reduction or such other information in regard thereto as the Court may think expedient with a view to giving proper information to the public, and, if the Court thinks fit, the causes which led to the reduction.

(3) Where a company is ordered to add to its name the words “and reduced”, those words shall, until the expiration of the period specified in the order, be deemed to be part of the name of the company.

**96. Registration of order and minute of reduction.**—(1) The Registrar—

(a) on production to him of an order of the Court confirming the reduction of the share capital of a company; and

(b) on the delivery to him of a certified copy of the order and of a minute approved by the Court showing, with respect to the share capital of the company as altered by the order, (i) the amount of the share capital, (ii) the number of shares into which it is to be divided, (iii) the amount of each share, and (iv) the amount, if any, at the date of the registration deemed to be paid up on each share;

shall register the order and minute.

(2) On the registration of the order and minute, and not before, the resolution for reducing share capital as confirmed by the order shall take effect.

(3) Notice of the registration shall be published in such manner as the Court may direct.

(4) The Registrar shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requirements of this Act with respect to reduction of share capital have been complied with, and that the share capital of the company is such as is stated in the minute.

(5) The minute when registered shall be deemed to be substituted for the corresponding part of the memorandum of the company, and shall be valid and alterable as if it had been originally contained therein.

(6) The substitution of any such minute as aforesaid for part of the memorandum of the company shall be deemed to be an alteration of the memorandum within the meaning of section 35.

**97. Liability of members in respect of reduced shares.—**(1) In the case of a reduction of share capital, a member of the company, past or present, shall not be liable, in respect of any share, to any call or contribution exceeding in amount the difference, if any, between—

- (a) the amount of the share as fixed by the minute of reduction, and
- (b) the amount paid on the share, or the reduced amount, if any, which is to be deemed to have been paid thereon, as the case may be :

Provided that, if any creditor entitled in respect of any debt or claim to object to the reduction of share capital is, by reason of his ignorance of the proceedings for reduction or of their nature and effect with respect to his claim, not entered on the list of creditors, and after the reduction, the company is unable, within the meaning of section 397, to pay the amount of his debt or claim, then—

- (a) every person who was a member of the company at the date of the registration of the order for reduction and minute, shall be liable to contribute for the payment of that debt or claim an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day immediately before the said date; and
  - (b) if the company is wound up, the Court, on the application of any such creditor and proof of his ignorance as aforesaid, may, if it thinks fit, settle accordingly a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list, as if they were ordinary contributories in a winding up.
- (2) Nothing in this section shall affect the rights of the contributories among themselves.

**98. Penalty for concealing name of creditor, etc.—**If any officer of the company—

- (a) knowingly conceals the name of 'any' creditor entitled to object to the reduction ; or
- (b) knowingly misrepresents the nature or amount of the debtor claim of any creditor ; or
- (c) abets or is privy to any such concealment or misrepresentation as aforesaid ;

he shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

#### *Variation of Shareholders' Rights*

**99. Alteration of rights of holders of special classes of shares.—**(1) In the case of a company the share capital of which is divided into different classes of shares, provision may be made by the memorandum or articles for authorising the variation of the rights attached to any class of shares in the company, subject to —

- (a) the consent of the holders of any specified proportion, not being less than three-fourths, of the issued shares of that class, or

(b) the sanction of a resolution passed at a separate meeting of the holders of those shares, and supported by the votes of the holders of any specified proportion, not being less than three-fourths, of those shares.

(2) Any provision in the memorandum or articles of a company in force immediately before the commencement of this Act which specifies for the purpose aforesaid any proportion which is less than three-fourths of the shareholders of the class concerned shall, after such commencement, have effect as if a proportion of three-fourths had been specified therein instead.

**100. Rights of dissentient share holders.**—(1) If, in pursuance of any provision such as is referred to in section 99, the rights attached to any such class of shares are at any time varied, the holders of not less in the aggregate than ten per cent of the issued shares of that class, being persons who did not consent to or vote in favour of the resolution for the variation, may apply to the Court to have the variation cancelled, and where any such application is made, the variation shall not have effect unless and until it is confirmed by the Court.

(2) An application under this section shall be made within fourteen days after the date on which the consent was given or the resolution was passed, as the case may be, and may be made on behalf of the shareholders entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

(3) On any such application, the Court, after hearing the applicant and any other persons who apply to the Court to be heard and appear to the Court to be interested in the application, may, if it is satisfied, having regard to all the circumstances of the case, that the variation would unfairly prejudice the shareholders of the class represented by the applicant, disallow the variation; and shall, if not so satisfied, confirm the variation.

(4) The decision of the Court on any such application shall be final.

(5) The company shall, within fifteen days after the service on the company of any order made on any such application, forward a copy of the order to the Registrar; and if default is made in complying with this provision the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty rupees.

(6) The expression "variation" in this section includes "abrogation" and the expression "varied" shall be construed accordingly.

#### *Transfer of shares and debentures*

**101. Interpretation of "shares" in sections 102 to 106.**—(1) In sections 102 to 106, references to shares shall, in the case of a company having no share capital, be construed as references to the interest of a member in the company.

(2) Nothing in sections 102 to 106 shall apply to any company formed for promoting the objects referred to in clause (a) of sub-section (1) of section 21 which applies its profits, if any, or other income, in promoting those objects and prohibits the payment of any dividend to its members.

**102. Transfer not to be registered except on production of instrument of transfer.**—A company shall not register a transfer of shares in, or debentures of, the company, unless a proper instrument of transfer duly stamped

and executed by the transferor and the transferee and specifying the name, address and occupation, if any, of the transferee, has been delivered to the company along with the scrip, or if no scrip is in existence, along with the letter of allotment of the shares or debentures, as the case may be:

Provided that where, on an application in writing made to the company by the transferee and bearing the stamp required for an instrument of transfer, it is proved to the satisfaction of the directors of the company that the instrument of transfer signed by the transferor and the transferee has been lost, the company may register the transfer on such terms as to indemnity as the directors may think fit :

Provided further that nothing in this section shall prejudice any power of the company to register as shareholder or debenture holder any person on whom the right to any shares in, or debentures of, the company has devolved by operation of law.

**103. Transfer by legal representative.**—A transfer of the share of a deceased member of a company made by his legal representative shall, although the legal representative is not himself a member, be as valid as if he had been a member at the time of the execution of the instrument of transfer.

**104. Application for transfer.**—(1) An application for the registration of a transfer may be made either by the transferor or by the transferee.

(2) Where the application is made by the transferor and relates to partly paid shares, the transfer shall not be registered unless the company gives notice of the application to the transferee and the transferee makes no objection to the transfer within two weeks from the receipt of the notice.

(3) For the purposes of sub-section (2), notice to the transferee shall be deemed to have been duly given if despatched by pre-paid registered post to the transferee at the address given in the instrument of transfer, and shall be deemed to have been duly delivered in the ordinary course of post.

**105. Power to refuse registration and appeal against refusals.**—(1) Nothing in sections 102 and 104 shall prejudice any power of the company under its articles to refuse to register the transfer of any shares in, or debentures of, the company.

(2) If, in pursuance of any such power, a company refuses to register any such transfer, it shall, within two months from the date on which the instrument of transfer was delivered to the company, send notice of the refusal to the transferee and the transferor.

If default is made in complying with this sub-section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty rupees for every day during which the default continues.

(3) Against any refusal of a company not being a private company which is a subsidiary of a public company, to register any such transfer, the transferor or transferee may, within two months of the receipt by him of the notice of refusal, appeal to the Central Government.

(4) All appeals under sub-section (3) shall be transferred to, and be heard and disposed of by, a single authority empowered in this behalf by the Central Government.

*Explanation.*—There shall not be more than one such authority at any one time.

(5) Such authority shall, after giving reasonable notice to the company, the transferor and the transferee and hearing their representations, if any, by order, allow or reject the appeal and give such incidental and consequential directions as to the payment of costs and otherwise as it thinks fit.

(6) If the appeal is allowed, the company shall give effect to the decision forthwith.

(7) All appeals under sub-section (3) shall be heard *in camera* and all proceedings therein or in relation thereto shall be confidential, and no suit, prosecution or other legal proceeding shall lie in respect of any allegation made in such proceedings, whether orally or otherwise.

**106. Certification of transfers.**—(1) The certification by a company of any instrument of transfer of shares in, or debentures of, the company shall be taken as a representation by the company to any person acting on the faith of the certification that there have been produced to the company such documents as on the face of them show a *prima facie* title to the shares or debentures in the transferor named in the instrument of transfer, but not as a representation that the transferor has any title to the shares or debentures.

(2) Where any person acts on the faith of an erroneous certification made by a company negligently, the company shall be under the same liability to him as if the certification had been made fraudulently.

(3) For the purposes of this section—

(a) an instrument of transfer shall be deemed to be certificated if it bears the words “certificate lodged” or words to the like effect;

(b) the certification of an instrument of transfer shall be deemed to be made by a company, if—

(i) the person issuing the certificated instrument is a person authorised to issue such instruments of transfer on the company’s behalf; and

(ii) the certification is signed by any officer or servant of the company or any other person, authorised to certificate transfers on the company’s behalf, or if a body corporate has been so authorised, by any officer or servant of that body corporate,

(c) a certification shall be deemed to be signed by any person, if it purports to be authenticated by his signature or initials (whether hand written or not), unless it is shown that the signature or initials was or were placed there neither by himself nor by any person authorised to use the signature or initials for the purpose of certifying transfers on the company’s behalf.

**107. Evidence of grant of probate or letters of administration.**—The production to a company of any document which, by Indian law, is sufficient evidence of the grant to some person—

(a) of the probate of the will of a deceased person, or

(b) of letters of administration in respect of the estate of a deceased person, shall be accepted by the company as sufficient evidence of the grant.

*Share warrants*

**108. Issue and effect of share warrants to bearer.**—(1) A company limited by shares, if so authorised by its articles, may, with the previous approval of the Central Government, with respect to any fully paid-up shares, issue under its common seal a warrant stating that the bearer of the warrant is entitled to the shares therein specified, and may provide, by coupons or otherwise, for the payment of the future dividends on the shares specified in the warrant.

(2) The warrant aforesaid is in this Act referred to as a "share warrant".

(3) A share warrant shall entitle the bearer thereof to the shares therein specified, and the shares may be transferred by delivery of the warrant.

**109. Share warrants and entries in register of members.**—(1) On the issue of a share warrant, the company shall strike out of its register of members the name of the member then entered therein as holding the shares specified in the warrant as if he had ceased to be a member, and shall enter in the register the following particulars, namely:—

(a) the fact of the issue of the warrant;

(b) a statement of the shares included in the warrant, distinguishing each share by its number, if any; and

(c) the date of the issue of the warrant.

(2) The bearer of a share warrant shall, subject to the articles of the company, be entitled on surrendering the warrant for cancellation and paying such fee to the company as the directors may from time to time determine, to have his name entered as a member in the register of members.

(3) The company shall be responsible for any loss incurred by any person by reason of the company entering in its register the name of a bearer of a share warrant in respect of the shares therein specified, without the warrant being surrendered and cancelled.

(4) Until the warrant is surrendered, the particulars specified in subsection (1) shall be deemed to be the particulars required by this Act to be entered in the register of members; and, on the surrender, the date of the surrender shall be entered in the register.

(5) Subject to the provisions of this Act, the bearer of a share warrant may, if the articles of the company so provide, be deemed to be a member of the company within the meaning of this Act, either for all purposes or for any purposes defined in the articles.

(6) If a default is made in complying with any of the requirements of this section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty rupees for every day during which the default continues.

*Penalty for personation of shareholder*

**110. Penalty for personation of shareholder.**—If any person deceitfully personates any owner of any share or interest in any company, or of any share warrant or coupon, issued in pursuance of this Act, and thereby obtains or endeavours to obtain any such share or interest or any such share warrant or coupon, or receives or endeavours to receive any money due to any such owner, he shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

*Special Provisions as to Debentures***111. Debentures with voting rights not to be issued hereafter.—**

No company shall, after the commencement of this Act, issue any debentures carrying voting rights at any meeting of the company, whether generally or in respect of particular classes of business.

**112. Right of debenture holders and members to have copies of trust deed.—**(1) A copy of any trust deed for securing any issue of debentures shall be forwarded to the holder of any such debentures or any member of the company, at his request and within seven days of the making thereof, on payment—

- (a) in the case of a printed trust deed, of the sum of one rupee ; and
- (b) in the case of a trust deed which has not been printed, of six annas for every one hundred words or fractional part thereof required to be copied.

(2) If a copy is refused or is not forwarded within the time specified in sub-section (1), the company, and every officer of the company who is in default, shall be punishable, for each offence, with fine which may extend to fifty rupees, and with a further fine which may extend to twenty rupees for every day during which the offence continues.

(3) The Court may also, by order, direct that the copy required shall forthwith be sent to the person requiring it.

**113. Liability of trustees for debenture holders.—**(1) Subject to the provisions of this section, any provision contained in a trust deed for securing an issue of debentures, or in any contract with the holders of debentures secured by a trust deed, shall be void in so far as it would have the effect of exempting a trustee thereof from, or indemnifying him against, liability for breach of trust, where he fails to show the degree of care and diligence required of him as trustee, having regard to the provisions of the trust deed conferring on him any powers, authorities or discretions.

(2) Sub-section (1) shall not invalidate—

- (a) any release otherwise validly given in respect of anything done or omitted to be done by a trustee before the giving of the release ; or
- (b) any provision enabling such a release to be given—
  - (i) on the agreement thereto of a majority of not less than three-fourths in value of the debenture holders present and voting in person or, where proxies are permitted, by proxy, at a meeting summoned for the purpose ; and
  - (ii) either with respect to specific acts or omissions or on the trustee dying or ceasing to act.

(3) Sub-section (1) shall not operate—

- (a) to invalidate any provision in force at the commencement of this Act so long as any person then entitled to the benefit of that provision or afterwards given the benefit thereof under sub-section (4) remains a trustee of the deed in question ; or
- (b) to deprive any person of any exemption or right to be indemnified in respect of anything done or omitted to be done by him while any such provision was in force.



(4) While any trustee of a trust deed remains entitled to the benefit of a provision saved by sub-section (3), the benefit of that provision may be given either—

(a) to all trustees of the deed, present and future ; or

(b) to any named trustees or proposed trustees thereof ;

by a resolution passed by a majority of not less than three-fourths in value of the debenture holders present in person or, where proxies are permitted, by proxy, at a meeting called for the purpose in accordance with the provisions of the deed or, if the deed makes no provision for calling meetings, a meeting called for the purpose in any manner approved by the Court.

**114. Perpetual debentures.**—A condition contained in any debenture or in any deed for securing any debentures, whether issued or executed before or after the commencement of this Act, shall not be invalid by reason only that thereby, the debentures are made irredeemable or redeemable only on the happening of a contingency, however remote, or on the expiration of a period, however long.

**115. Power to re-issue redeemed debentures in certain cases.**—  
(1) Where either before or after the commencement of this Act, a company has redeemed any debentures previously issued, then,—

(a) unless any provision to the contrary, whether express or implied, is contained in the articles, or in the conditions of issue, or in any contract entered into by the company ; or

(b) unless the debentures have been redeemed in pursuance of any obligation on the company so to do, not being an obligation enforceable only by the person to whom the redeemed debentures were issued or his assigns ; or

(c) unless the company has, by passing a resolution to that effect or by some other act, manifested its intention that the debentures shall be cancelled ;

the Company shall have, and shall be deemed always to have had, the right to keep the debentures alive for the purposes of re-issue ; and in exercising such a right, the company shall have, and shall be deemed always to have had, power to re-issue the debentures either by re-issuing the same debentures or by issuing other debentures in their place.

(2) Upon such re-issue, the person entitled to the debentures shall have, and shall be deemed always to have had, the same rights and priorities as if the debentures had never been redeemed.

(3) Where with the object of keeping debentures alive for the purpose of re-issue, they have, either before or after the commencement of this Act, been transferred to a nominee of the company, a transfer from that nominee shall be deemed to be a re-issue for the purposes of this section.

(4) Where a company has, either before or after the commencement of this Act, deposited any of its debentures to secure advances from time to time on current account or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the company having ceased to be in debit whilst the debentures remained so deposited.

(5) The re-issue of a debenture or the issue of another debenture in its place under the power by this section given to, or deemed to have been possessed by, a company, whether the re-issue or issue was made before or after the commencement of this Act, shall be treated as the issue of a new debenture for the purposes of stamp duty, but it shall not be so treated for the purposes of any provision limiting the amount or number of debentures to be issued :

Provided that any person lending money on the security of a debenture re-issued under this section which appears to be duly stamped may give the debenture in evidence in any proceedings for enforcing his security without payment of the stamp duty or any penalty in respect thereof, unless he had notice or, but for his negligence, might have discovered, that the debenture was not duly stamped; but in any such case the company shall be liable to pay the proper stamp duty and penalty.

(6) Nothing in this section shall prejudice—

- " (a) the operation of any decree or order of a Court of competent jurisdiction pronounced or made before the twenty-fifth day of February, 1910, as between the parties to the proceedings in which the decree or order was made ; or
- (b) where an appeal has been preferred against any such decree or order, the operation of any decree or order passed on such appeal, as between the parties to such appeal ; or
- (c) any power to issue debentures in the place of any debentures paid off or otherwise satisfied or extinguished, reserved to a company by its debentures or the securities for the same.

**116. Specific performance of contract to subscribe for debentures.**—A contract with a company to take up and pay for any debentures of the company may be enforced by a decree for specific performance.

**117. Payments of certain debts out of assets subject to floating charge in priority to claims under the charge.**—(1) Where either—

- (a) a receiver is appointed on behalf of the holders of any debentures of a company secured by a floating charge, or
- (b) possession is taken by or on behalf of those debenture holders of any property comprised in or subject to the charge,

then, if the company is not at the time in course of being wound up, the debts which in every winding up are under the provisions of Part VII relating to preferential payments to be paid in priority to all other debts, shall be paid forthwith out of any assets coming to the hands of the receiver or other person taking possession as aforesaid in priority to any claim for principal or interest in respect of the debentures.

(2) The periods of time mentioned in the said provisions of Part VII shall be reckoned from the date of appointment of the receiver or of possession being taken as aforesaid, as the case may be.

(3) Any payments made under this section shall be recouped, as far as may be, out of the assets of the company available for payment of general creditors.

## PART V

## REGISTRATION OF CHARGES

**118. " Charge " to include mortgage in this Part.**—In this Part, the expression " charge " includes a mortgage.

**119. Certain charges to be void against liquidator or creditors if not registered.**—(1) Subject to the provisions of this Part, every charge created on or after the 1st day of April 1914 by a company and being a charge to which this section applies shall, so far as any security on the company's property or undertaking is conferred thereby, be void against the liquidator and any creditor of the company, unless the prescribed particulars of the charge, together with the instrument, if any, by which the charge is created or evidenced, or a copy thereof verified in the prescribed manner, are filed with the Registrar for registration in the manner required by this Act within twenty-one days after the date of its creation.

(2) Nothing in sub-section (1) shall prejudice any contract or obligation for the repayment of the money secured by the charge.

(3) When a charge becomes void under this section, the money secured thereby shall immediately become payable.

(4) This section applies to the following charges :—

- (a) a charge for the purpose of securing any issue of debentures ;
- (b) a charge on uncalled share capital of the company ;
- (c) a charge on any immovable property, wherever situate, or any interest therein, but not including a charge for any rent or other periodical sum issuing out of land ;
- (d) a charge on book debts of the company ;
- (e) a charge, not being a pledge, on any movable property of the company except stock-in-trade ;
- (f) a floating charge on the undertaking or property of the company ;
- (g) a charge on calls made but not paid ;
- (h) a charge on a ship or any share in a ship;
- (i) a charge on goodwill, on a patent or a licence under a patent, on a trade mark or on a copyright or a licence under a copyright.

(5) In the case of a charge created out of India, and comprising solely property situate outside India, twenty-one days after the date on which the instrument creating or evidencing the charge or copy thereof could, in due course of post and if despatched with due diligence, have been received in India shall be substituted for twenty-one days after the date of the creation of the charge, as the time within which the particulars and instrument or copy are to be filed with the Registrar.

(6) Where a charge is created in India but comprises property outside India, the instrument creating or purporting to create the charge under this section or a copy thereof verified in the prescribed manner, may be filed for registration, notwithstanding that further proceedings may be necessary to make the charge valid or effectual according to the law of the country in which the property is situate.

(7) Where a negotiable instrument has been given to secure the payment of any book debts of a company, the deposit of the instrument for the purpose of securing an advance to the company shall not, for the purposes of this section, be treated as a charge on those book debts.

(8) The holding of debentures entitling the holder to a charge on immovable property shall not, for the purposes of this section, be deemed to be an interest in immovable property.

(9) In this section, India does not include Burma, Aden, or Pakistan, whatever the date of the charge in question.

**120. Date of notice of charge.**—Where any charge on any property of a company required to be registered under section 119 has been so registered, any person acquiring such property or any part thereof, or any share or interest therein, shall be deemed to have notice of the charge as from the date of such registration.

**121. Registration of charges on properties acquired subject to charge.**—(1) Where a company acquires any property which is subject to a charge of any such kind as would, if it had been created by the company after the acquisition of the property, have been required to be registered under this Part, the company shall cause the prescribed particulars of the charge, together with a copy (certified in the prescribed manner to be a correct copy) of the instrument, if any, by which the charge was created or is evidenced, to be delivered to the Registrar for registration in the manner required by this Act within twenty-one days after the date on which the acquisition is completed:

Provided that, if the property is situate and the charge was created outside India, twenty-one days after the date on which the copy of the instrument could, in due course of post and if despatched with due diligence, have been received in India shall be substituted for twenty-one days after the completion of the acquisition as the time within which the particulars and the copy of the instrument are to be delivered to the Registrar.

(2) If default is made in complying with sub-section (1), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees.

**122. Particulars in case of series of debentures entitling holders *pari passu*.**—Where a series of debentures containing, or giving by reference to any other instrument, any charge to the benefit of which the debenture holders of that series are entitled *pari passu* is created by a company, it shall, for the purposes of section 119, be sufficient, if there are filed with the Registrar, within twenty-one days after the execution of the deed containing the charge or, if there is no such deed, after the execution of any debentures of the series, the following particulars :—

- (a) the total amount secured by the whole series ;
- (b) the dates of the resolutions authorising the issue of the series and the date of the covering deed, if any, by which the security is created or defined ;
- (c) a general description of the property charged ;
- (d) the names of the trustees, if any, for the debenture holders ;

together with the deed containing the charge, or a copy of the deed verified in the prescribed manner, or if there is no such deed, one of the debentures of the series :—

Provided that, where more than one issue is made of debentures in the series, there shall be filed with the Registrar for entry in the register particulars of the date and amount of each issue, but an omission to do this shall not affect the validity of the debentures issued.

**123. Particulars in case of commission etc., on debentures.—**

Where any commission, allowance or discount has been paid or made either directly or indirectly by a company to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any debentures of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any such debentures, the particulars required to be filed for registration under sections 119 and 122 shall include particulars as to the amount or rate per cent of the commission, discount or allowance so paid or made; but an omission to do this shall not affect the validity of the debentures issued :

Provided that the deposit of any debentures as security for any debt of the company shall not, for the purposes of this section, be treated as the issue of the debentures at a discount.

**124. Register of charges to be kept by Registrar.—**(1) The Registrar shall keep, with respect to each company, a register in the prescribed form of all the charges requiring registration under this Part, and shall, on payment of the prescribed fee, enter in the register, with respect to every such charge, the following particulars :—

- (a) in the case of a charge to the benefit of which the holders of a series of debentures are entitled, such particulars as are specified in section 122 ;
- (b) in the case of any other charge—
  - (i) if the charge is a charge created by the company, the date of its creation ; and if the charge was a charge existing on property acquired by the company, the date of the acquisition of the property ;
  - (ii) the amount secured by the charge ;
  - (iii) short particulars of the property charged ; and
  - (iv) the persons entitled to the charge.

(2) After making the entry required by sub-section (1), the Registrar shall return the instrument, if any, or the verified copy thereof, as the case may be, filed in accordance with the provisions of this Part, to the person filing the same.

(3) The register kept in pursuance of this section shall be open to inspection by any person on payment of a fee of one rupee for each inspection.

**125. Index to register of charges.—**The Registrar shall keep a chronological index, in the prescribed form and with the prescribed particulars, of the charges registered with him in pursuance of this Part.

**126. Certificate of registration.—**The Registrar shall give a certificate under his hand of the registration of any charge registered in pursuance of this Part, stating the amount thereby secured ; and the certificate shall be conclusive evidence that the requirements of this Part as to registration have been complied with.

**127. Endorsement of certificate of registration on debenture or certificate of debenture stock.**—(1) The company shall cause a copy of every certificate of registration given under section 126, to be endorsed on every debenture or certificate of debenture stock which is issued by the company and the payment of which is secured by the charge so registered:

Provided that nothing in this sub-section shall be construed as requiring a company to cause a certificate of registration of any charge so given to be endorsed on any debenture or certificate of debenture stock issued by the company before the charge was created.

(2) If any person knowingly delivers or authorises or permits the delivery of any debenture or certificate of debenture stock which, under the provisions of subsection (1), is required to have endorsed on it a copy of a certificate of registration without the copy being so endorsed upon it, he shall, without prejudice to any other liability, be punishable with fine which may extend to one thousand rupees.

**128. Duty of company as regards registration and right of interested party.**—(1) It shall be the duty of a company to file with the Registrar for registration the particulars of every charge created by the company and of the issues of debentures of a series, requiring registration under this Part ; but registration of any such charge may also be effected on the application of any person interested therein.

(2) Where registration is effected on the application of some person other than the company, that person shall be entitled to recover from the company the amount of any fees properly paid by him to the Registrar on the registration.

**129. Provisions of Part to apply to modification of charges.**—Whenever the terms or conditions, or the extent or operation, of any charge registered under this Part are or is modified, it shall be the duty of the company to send to the Registrar the particulars of such modification, and the provisions of this Part as to registration of a charge shall apply to such modification of the charge.

**130. Copy of instrument creating charge to be kept by company at registered office.**—Every company shall cause a copy of every instrument creating any charge requiring registration under this Part to be kept at the registered office of the company :

Provided that, in the case of a series of uniform debentures, a copy of one debenture of the series shall be sufficient.

**131. Entry in register of charges of appointment of receiver or manager.**—(1) If any person obtains an order for the appointment of a receiver or manager of the property of a company or appoints such a receiver or manager under any powers contained in any instrument, he shall, within fifteen days from the date of the order or of the appointment under the said powers, give notice of the fact to the Registrar, and the Registrar shall, on payment of the prescribed fee, enter the fact in the register of charges.

(2) Where any person appointed receiver or manager of the property of a company under the powers contained in any instrument ceases to act as such, he shall, on so ceasing, give to the Registrar notice to that effect ; and the Registrar shall enter the notice in the register of charges.

(3) If any person makes default in complying with the requirements of sub-section (1) or (2), he shall be punishable with fine which may extend to fifty rupees for every day during which the default continues.

**132. Company to report satisfaction and procedure there-after.**—(1) The company shall give intimation to the Registrar of the payment or satisfaction, in whole or in part, of any charge relating to the company and requiring registration under this Part, within twenty-one days from the date of such payment or satisfaction.

(2) The Registrar shall, on receipt of such intimation, cause a notice to be sent to the holder of the charge calling upon him to show cause within a time (not exceeding fourteen days) specified in such notice, why payment or satisfaction should not be recorded as intimated to the Registrar.

(3) If no cause is shown, the Registrar shall order that a memorandum of satisfaction in whole or in part, as the case may be, shall be entered in the register of charges.

(4) Where cause is shown, the Registrar shall record a note to that effect in the register, and shall inform the company that he has done so.

(5) Where the Registrar enters a memorandum of satisfaction in whole or in part, he shall, if so required, furnish the company with a copy thereof.

(6) Nothing in this section shall be deemed to affect the power of the Registrar to make an entry in the register of charges under section 133 otherwise than on receipt of an intimation from the company.

**133. Power of Registrar to make entries of satisfaction and release of property from charge in absence of intimation from company.**—The Registrar shall have power, on evidence being given to his satisfaction with respect to any registered charge,—

(a) that the debt for which the charge was given has been paid or satisfied in whole or in part ; or

(b) that part of the property or undertaking charged has been released from the charge or has ceased to form part of the company's property or undertaking;

to enter in the register of charges a memorandum of satisfaction in whole or in part, or of the fact that part of the property or undertaking has been released from the charge or has ceased to form part of the company's property or undertaking, as the case may be, notwithstanding the fact that no intimation has been received by him from the company,

**134. Rectification by Court of register of charges.**—(1) The Court on being satisfied—

(a) that the omission to register a charge within the time required by this Part or that the omission or mis-statement of any particular with respect to any such charge or any memorandum of satisfaction or other entry made in pursuance of section 132 or 133 was accidental, or due to inadvertence, or to some other sufficient cause, or is not of a nature to prejudice the position of creditors shareholders or of the company, or

(b) that on other grounds it is just and equitable to grant relief, may, on the application of the company or any person interested and on such terms and conditions as seem to the Court just and expedient, order that the time for the registration shall be extended or, as the case may be, that the omission or mis-statement shall be rectified.

(2) The Court may make such order as to the costs of an application under sub-section (1) as it thinks fit.

(3) Where the Court extends the time for the registration of a charge, the order shall not prejudice any rights acquired in respect of the property concerned before the charge is actually registered.

**135. Penalties.**—(1) If default is made in filing with the Registrar for registration the particulars—

- (a) of any charge created by the company ; or
- (b) of the payment or satisfaction of a debt in respect of which a charge has been registered under this Part ; or
- (c) of the issues of debentures of a series;

requiring registration with the Registrar under the provisions of this Part, then, unless the registration has been effected on the application of some other person, the company, and every officer of the company or other person who is in default, shall be punishable with fine which may extend to five hundred rupees for every day during which the default continues.

(2) Subject as aforesaid, if any company makes default in complying with any of the other requirements of this Act as to the registration with the Registrar of any charge created by the company or of any fact connected therewith, the company, and every officer of the company who is in default, shall, without prejudice to any other liability, be punishable with fine which may extend to one thousand rupees.

**136. Company's register of charges.**—(1) Every company shall keep at its registered office a register of charges and enter therein all charges specifically affecting property of the company and all floating charges on the undertaking or on any property of the company, giving in each case—

- (i) a short description of the property charged ;
- (ii) the amount of the charge ; and
- (iii) except in the case of securities to bearer, the names of the person entitled to the charge.

(2) If any officer of the company knowingly omits or authorises or permits the omission of any entry required to be made in pursuance of sub-section (1) he shall be punishable with fine which may extend to five hundred rupees.

**137. Right to inspect copies of instruments creating charges and company's register of charges.**—(1) The copies kept at the registered office of the company in pursuance of section 130 of instruments creating charges and the register of charges kept in pursuance of section 136, shall be open during business hours (but subject to such reasonable restrictions as the company in general meeting may impose, so that not less than two hours in each day are allowed for inspection) to the inspection of any creditor or member of the company without fee.

(2) The register of charges shall also be open, during business hours but subject to the reasonable restrictions aforesaid, to the inspection of any other person on payment of a fee, of one rupee for each inspection.

(3) If inspection of the said copies or register is refused, the company, and every officer of the company who is in default shall be punishable with fine which may extend to fifty rupees and with a further fine which may extend to twenty rupees for every day during which the refusal continues.



(4) The Court may also by order compel an immediate inspection of the said copies or register.

**138. Application of Part to charges requiring registration under it but not under previous law.**—In respect of any charge created before the commencement of this Act which, if this Act had been in force at the relevant time, would have had to be registered by the company in pursuance of this Part but which did not require registration under the Indian Companies Act, 1913 (VII of 1913), and in respect of all matters relating to such charge, the provisions of this part shall apply and have effect in all respects, as if the date of commencement of this Act had been substituted therein for the date of creation of the charge, or the date of completion of the acquisition of the property subject to the charge, as the case may be.

## PART VI

### MANAGEMENT AND ADMINISTRATION

#### (i) GENERAL PROVISIONS

##### *Registered Office and Name*

**139. Registered office of company.**—(1) A company shall, as from the day on which it begins to carry on business, or as from the twenty-eighth day after the date of its incorporation, whichever is earlier, have a registered office to which all communications and notices may be addressed.

(2) Notice of the situation of the registered office, and of every change therein, shall be given within twenty-eight days after the date of the incorporation of the company or after the date of the change, as the case may be, to the Registrar who shall record the same:

Provided that except on the authority of a special resolution passed by the company, the registered office of the company shall not be removed to a place at a greater distance than ten miles, in the case of an existing company, from the place where it is situated at the commencement of this Act, and in the case of any other company, from the place where it is first situated.

(3) The inclusion in the annual return of a company of a statement as to the address of its registered office shall not be taken to satisfy the obligation imposed by sub-section (2).

(4) If a company carries on business without complying with the requirements of this section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty rupees for every day during which it so carries on business.

**140. Publication of name by company.**—(1) Every company—

- (a) shall paint or affix its name, and keep the same painted or affixed, on the outside of every office or place in which its business is carried on, in a conspicuous position, in letters easily legible; and if the characters employed therefor are not those of the language, or of one of the languages, in general use in that locality, also in the characters of that language or of one of those languages;
- (b) shall have its name engraven in legible characters on its seal;

- (c) shall have its name mentioned in legible characters in all its business letters, in all its bill heads and letter paper and in all notices, advertisements and other official publications of the company; and in all bills of exchange, hundis, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of the company, and in all bills of parcels, invoices, receipts and letters of credit of the company.
- (2) If a company does not paint or affix its name, or keep the same painted or affixed in the manner directed by clause (a) of sub-section (1), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty rupees for not so painting or affixing its name, and for every day during which its name is not so kept painted or affixed.
- (3) If a company fails to comply with clause (b) or clause (c) of sub-section (1), the company shall be punishable with fine which may extend to five hundred rupees.
- (4) If an officer of a company or any person on its behalf—
- (a) uses or authorises the use of any seal purporting to be a seal of the company whereon its name is not engraved as aforesaid, or
  - (b) issues or authorises the issue of any business letter, bill head, letter paper, notice, advertisement or other official publication of the company, or
  - (c) signs, or authorises to be signed, on behalf of the company, any bill of exchange, hundi, promissory note, endorsement, cheque or order for money or goods wherein its name is not mentioned in the manner aforesaid, or
  - (d) issues or authorises the issue of any bill of parcels, invoice, receipt or letter of credit of the company, wherein its name is not mentioned in the manner aforesaid,

such officer or person shall be punishable with fine which may extend to five hundred rupees, and shall further be personally liable to the holder of the bill of exchange, hundi, promissory note, cheque or order for money or goods, for the amount thereof, unless it is duly paid by the company.

**141. Publication of authorised as well as subscribed and paid-up capital.**—(1) Where any notice, advertisement or other official publication, or any business letter, bill head or letter paper, of a company contains a statement of the amount of the authorised capital of the company, such notice, advertisement or other official publication or such letter, bill head or letter paper, shall also contain a statement, in an equally prominent position and in equally conspicuous characters, of the amount of the capital which has been subscribed and the amount paid up.

(2) If default is made in complying with the requirements of sub-section (1), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to one thousand rupees.

*Restrictions on commencement of business.*

**142. Restrictions on commencement of business.**—(1) Where a company having a share capital has issued a prospectus inviting the public to

subscribe for its shares, the company shall not commence any business or exercise any borrowing powers, unless—

- (a) shares held subject to the payment of the whole amount thereof in cash have been allotted to an amount not less in the whole than the minimum subscription ;
- (b) every director of the company has paid to the company, on each of the shares taken or contracted to be taken by him and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription ;
- (c) no money is or may become liable to be repaid to applicants for any shares or debentures which have been offered for public subscription by reason of any failure to apply for or to obtain permission for the shares or debentures to be dealt in on any stock exchange ; and
- (d) there has been filed with the Registrar a duly verified declaration by one of the directors or the secretary, in the prescribed form, that the conditions specified in clauses (a), (b) and (c) have been complied with.

(2) Where a company having a share capital has not issued a prospectus inviting the public to subscribe for its shares, the company shall not commence any business or exercise any borrowing powers, unless—

- (a) there has been filed with the Registrar a statement in lieu of prospectus ;
- (b) every director of the company has paid to the company, on each of the shares taken or contracted to be taken by him and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares payable in cash ; and
- (c) there has been filed with the Registrar a duly verified declaration by one of the directors or the secretary, in the prescribed form, that clause (b) of this sub-section has been complied with.

(3) The Registrar shall, on the filing of a duly verified declaration in accordance with the provisions of sub-section (1) or sub-section (2), as the case may be, and, in the case of a company which is required by sub-section (2) to file a statement in lieu of prospectus, of such a statement, certify that the company is entitled to commence business, and that certificate shall be conclusive evidence that the company is so entitled.

(4) Any contract made by a company before the date at which it is entitled to commence business shall be provisional only, and shall not be binding on the company until that date, and on that date it shall become binding.

(5) Nothing in this section shall prevent the simultaneous offer for subscription or allotment of any shares and debentures or the receipt of any money payable on application for debentures.

(6) If any company commences business or exercises borrowing powers in contravention of this section, every person who is responsible for the contravention shall, without prejudice to any other liability, be punishable with fine which may extend to five hundred rupees for every day during which the contravention continues.

(7) Nothing in this section shall apply to—

(a) a private company ; or

(b) a company registered before the first day of April, 1914, which has not issued a prospectus inviting the public to subscribe for its shares.

(8) The provisions of this section, in so far as they do not relate to shares, shall also apply to a company limited by guarantee and not having a share capital.

*Registers of members and debentureholders*

**143. Register of members.**—(1) Every company shall keep in one or more books a register of its members, and enter therein the following particulars:—

(a) the name and address, and the occupation, if any, of each member;

(b) in the case of a company having a share capital, the shares held by each member, distinguishing each share by its number, if any, and the amount paid or agreed to be considered as paid on those shares ;

(c) the date at which each person was entered in the register as a member;

(d) the date at which any person ceased to be a member :

Provided that where the company has converted any of its shares into stock and given notice of the conversion to the Registrar, the register shall show the amount of stock held by each of the members concerned instead of the shares so converted which were previously held by him.

(2) If default is made in complying with sub-section (1), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty rupees for every day during which the default continues.

**144. Index of members.**—(1) Every company having more than fifty members shall, unless the register of members is in such a form as in itself to constitute an index, keep an index (which may be in the form of a card index) of the names of the members of the company and shall, within fourteen days after the date on which any alteration is made in the register of members, make the necessary alteration in the index.

(2) The index shall, in respect of each member, contain a sufficient indication to enable the entries relating to that member in the register to be readily found.

(3) If default is made in complying with sub-sections (1) and (2), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty rupees.

**145. Register and index of debentureholders of company.**—(1) Every company shall keep in one or more books a register of the holders of its debentures and enter therein the following particulars, namely:—

(a) the name and address, and the occupation, if any, of each debenture holder;

(b) the debentures held by each holder, distinguishing each debenture by its number, if any, and the amount paid or agreed to be considered as paid on those debentures;

(c) the date at which each person was entered in the register as a debenture holder;

(d) the date at which any person ceased to be a debenture holder.

(2) (a) Every company having more than fifty debenture holders shall, unless the register of debenture holders is in such a form as in itself to constitute an index, keep an index (which may be in the form of a card index) of the names of the debenture holders of the company and shall, within fourteen days after the date on which any alteration is made in the register of debenture holders, make the necessary alteration in the index.

(b) The index shall, in respect of each debenture holder, contain a sufficient indication to enable the entries relating to that holder in the register to be readily found.

(3) If default is made in complying with sub-sections (1) and (2), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty rupees.

(4) Sub-sections (1) to (3) shall not apply with respect to debentures which, *ex facie*, are payable to the bearer thereof.

**146. Trusts not to be entered on register.**—No notice of any trust express, implied or constructive, shall be entered on the register of members or of debenture holders, or be receivable by the Registrar.

**147. Power to close register of members or debenture holders.**—

(1) A company may, after giving not less than seven days' previous notice by advertisement in some newspaper circulating in the district in which the registered office of the company is situate, close the register of members or the register of debenture holders for any time or times not exceeding in the whole forty-five days in each year, but not exceeding thirty days at any one time.

(2) If the register of members or of debenture holders is closed without giving the notice provided in sub-section (1), or after giving shorter notice than that so provided, or for a continuous or an aggregate period in excess of the limits specified in that sub-section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees for every day during which the register is so closed.

**148. Power of Court to rectify register of members.**—(1) If—

(a) the register of members wrongly contains or does not contain the name of any person;

(b) default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member; the person aggrieved, or any member of the company, or the company, may apply to the Court for rectification of the register.

(2) The Court may either reject the application or order rectification of the register; and in the latter case, may direct payment by the company of the damages, if any, sustained by any party aggrieved.

In either case, the Court in its discretion may make such order as to costs as it thinks fit.

(3) On an application under this section, the Court—

(a) may decide any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between members or alleged members, or between members or alleged members on the one hand and the company on the other hand; and

(b) generally, may decide any question which it is necessary or expedient to decide in connection with the application for rectification.

(4) From any order passed by the Court on the application, or on any issue raised therein and tried separately, an appeal shall lie on the grounds mentioned in section 100 of the Code of Civil Procedure, 1908 (Act V of 1908)—

(a) if the order be passed by a District Court, to the High Court ;

(b) if the order be passed by a single Judge of a High Court consisting of three or more Judges, to a Bench of that High Court.

**149. Notice to Registrar of rectification of register.**—In the case of a company required by this Act to file a list of its members with the Registrar, the Court, when making an order for rectification of the register, shall, by its order, direct notice of the rectification to be filed with the Registrar within a fortnight from the date of the making of the order.

*Foreign registers of members or debenture holders.*

**150. Power for company to keep branch register of members or debenture holders outside India.**—(1) A company which has a share capital or which has issued debentures may, if so authorised by its articles, cause to be kept in any State or country outside India a branch register of members or debenture holders resident in that State or country (in this Act called a “foreign register”).

(2) The company shall, within one month from the date of the opening of any foreign register, file with the Registrar notice of the situation of the office where such register is kept and, in the event of any change in the situation of such office or of its discontinuance, shall within one month from the date of such change or discontinuance, as the case may be, file notice with the Registrar of such change or discontinuance.

(3) If default is made in complying with the requirements of this section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty rupees for every day during which the default continues.

**151. Provisions as to foreign registers.**—(1) A foreign register shall be deemed to be part of the company's register (in this section called the “principal register”) of members or of debenture holders, as the case may be

(2) A foreign register shall be kept, shall be open to inspection and may be closed and extracts may be taken therefrom and copies thereof may be required, in the same manner, *mutatis mutandis*, as is applicable to the principal register under this Act, except that the advertisement before closing the register shall be inserted in some newspaper circulating in the district wherein the foreign register is kept.

(3) The decision of any competent Court in the State or country in which a foreign register is kept in regard to the rectification of that register shall have the same force and effect as if it were the decision of a competent Court in India.

(4) The company shall—

- (a) transmit to its registered office in India a copy of every entry in any foreign register as soon as may be after the entry is made; and
- (b) keep at such office a duplicate of every foreign register duly entered up from time to time.

(5) Every such duplicate shall, for all the purposes of this Act, be deemed to be part of the principal register.

(6) Subject to the provisions of this section with respect to duplicated registers, the shares or debentures registered in any foreign register shall be distinguished from the shares or debentures registered in the principal register and in every other foreign register; and no transaction with respect to any shares or debentures registered in a foreign register shall, during the continuance of that registration, be registered in any other register.

(7) The company may discontinue the keeping of any foreign register, and thereupon all entries in that register shall be transferred to some other foreign register kept by the company in the same part of the world or to the principal register.

(8) Subject to the provisions of this Act, a company may, by its articles make such regulations as it thinks fit in regard to its foreign registers.

(9) If default is made in complying with sub-section (4), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty rupees.

#### *Annual Returns*

##### **152. Annual return to be made by company having a share capital.—**

(1) Every company having a share capital shall, within one month from the day on which each of the annual general meetings referred to in section 159 is held, prepare and file with the Registrar a return containing the particulars specified in Part I of Schedule V, as they stood on that day, regarding—

- (a) its registered office,
- (b) the register of its members,
- (c) the register of its debenture holders,
- (d) its shares and debentures,
- (e) its indebtedness,
- (f) its members and debenture holders, past and present, and
- (g) its directors, managing director, managing agent and manager, past and present.

(2) The said return shall be in the form set out in Part II of Schedule V or as near thereto as circumstances admit:

Provided that where the company has converted any of its shares into stock and given notice of the conversion to the Registrar, the list referred to in paragraph 5 of Part I of Schedule V shall state the amount of stock held by each of the members concerned instead of the shares so converted previously held by him.

**153. Annual return to be made by company not having a share capital.**—(1) Every company not having a share capital shall, within one month from the day on which each of the annual general meetings referred to in section 159 is held, prepare and file with the Registrar a return stating the following particulars as they stood on that day:—

- (a) the address of the registered office of the company;
- (b) all such particulars with respect to the persons who, at the date of the return, were the directors of the company, its managing agent, and its manager as are set out in section 281.

(2) There shall be annexed to the return a statement containing particulars of the total amount of the indebtedness of the company as on the day aforesaid in respect of all charges which are or were required to be registered with the Registrar under this Act or under any previous companies law or which would have been required to be registered under this Act if they had been created after the commencement of this Act.

**154. Further provisions regarding annual return and certificate to be annexed thereto.**—(1) The copy of the annual return filed with the Registrar under section 152 or 153, as the case may be, shall be signed both by a director and by the managing agent, manager or secretary of the company or where there is no managing agent, manager or secretary, by two directors of the company, one of whom shall be the managing director where there is one.

(2) There shall also be filed with the Registrar along with the return a certificate signed by both the signatories of the return, stating—

(a) that the return states the facts as they stood on the day of the annual general meeting aforesaid, correctly and completely; and

(b) in the case of a private company also (i) that the company has not since the date of the annual general meeting with reference to which the last return was submitted, or in the case of a first return, since the date of the incorporation of the company, issued any invitation to the public to subscribe for any shares or debentures of the company, and (ii) that, where the annual return discloses the fact that the number of members of the company exceeds fifty, the excess consists wholly of persons who under sub-clause (b) of clause (iii) of sub-section (1) of section 3 are not to be included in reckoning the number of fifty.

**155. Penalty and interpretation.**—(1) If a company fails to comply with any of the provisions contained in section 152, 153, or 154, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty rupees for every day during which the default continues.

(2) For the purposes of this section and sections 152, 153, and 154, the expressions "officer" and "director" shall include any person in accordance with whose directions or instructions the directors of the company are accustomed to act.

*General provisions regarding registers and returns*

**156. Place of keeping, and inspection of, registers and returns.**—(1) The register of members commencing from the date of the registration of the company, the index of members, the register and index of debenture holders and all annual returns prepared under sections 152 and 153, together with the certificates and documents required to be annexed thereto under sections 153 and 154 shall be kept at the registered office of the company.



(2) The registers, indexes, returns, certificates and other documents referred to in sub-section (1) shall, except when the register of members or debenture holders is closed under the provisions of this Act, be open during business hours (subject to such reasonable restrictions, as the company in general meeting may impose, so that not less than two hours in each day are allowed for inspection) to the inspection of—

(a) any member or debenture holder without fee ; and

(b) any other person on payment of a fee of one rupee. for each inspection.

(3) Any such member, debenture holder or other person may—

(a) make extracts from any register, index, certificate or other document referred to in sub-section (2) without fee or additional fee, as the case may be ; or

(b) require a copy of any such document or of any part thereof, on payment of six annas for every one hundred words or fractional part thereof required to be copied.

(4) The company shall cause any copy required by any person under clause (b) of sub-section (3) to be sent to that person within a period of ten days, exclusive of non-working days, commencing on the day next after the day on which the requirement is received by the company.

(5) If any inspection, or the making of any extract required under this section, is refused, or if any copy required under this section is not sent within the period specified in sub-section (4), the company, and every officer of the company who is in default, shall be punishable, in respect of each offence, with fine which may extend to fifty rupees for every day during which the refusal or default continues.

(6) The Court may also, by order, compel an immediate inspection of the document, or direct that the extract required shall forthwith be allowed to be taken by the person requiring it, or that the copy required shall forthwith be sent to the person requiring it, as the case may be.

**157. Registers etc., to be evidence.**—The register of members, the register of debenture holders, and the annual returns, certificates and statements referred to in sections 152, 153 and 154 shall be *prima facie* evidence of any matters by this Act directed or authorised to be inserted therein.

#### *Meetings and Proceedings*

**158. Statutory meeting and statutory report of company.**—(1) Every company limited by shares, and every company limited by guarantee and having a share capital, shall, within a period of not less than one month nor more than six months from the date at which the company is entitled to commence business, hold a general meeting of the members of the company, which shall be called “the statutory meeting”.

(2) The directors shall, at least twenty-one days before the day on which the meeting is held, forward a report (in this Act referred to as “the statutory report”) to every member of the company :

Provided that if the statutory report is forwarded later than is required above, it shall, notwithstanding that fact, be deemed to have been duly forwarded if it is so agreed to by all the members entitled to attend and vote at the meeting.

(3) The statutory report shall set out—

- (a) the total number of shares allotted, distinguishing shares allotted as fully or partly paid up otherwise than in cash, and stating in the case of shares partly paid up, the extent to which they are so paid up, and in either case the consideration for which they have been allotted ;
- (b) the total amount of cash received by the company in respect of all the shares allotted, distinguished as aforesaid ;
- (c) an abstract of the receipts of the company and of the payments made thereout, up to a date within seven days of the date of the report, exhibiting under distinctive headings the receipts of the company from shares and debentures and other sources, the payments made thereout, and particulars concerning the balance remaining in hand, and an account or estimate of the preliminary expenses of the company, showing separately any commission or discount paid on the issue or sale of shares or debentures ;
- (d) the names, addresses and descriptions of the directors of the company, and also, if there be any, of its managing agent, manager, auditors, and secretary ; and the changes, if any, which have occurred in such names, addresses and descriptions since the date of the incorporation of the company ;
- (e) the particulars of any contract which, or the modification or the proposed modification of which, is to be submitted to the meeting for its approval, together in the latter case with the particulars of the modification or proposed modification ;
- (f) the extent, if any, to which each under-writing contract, if any, has not been carried out, and the reasons therefor ;
- (g) the arrears, if any, due on calls from every director ; from the managing agent, every partner of the managing agent, every firm in which the managing agent is a partner, and where the managing agent is a private company, every director thereof ; and from the manager ; and
- (h) the particulars of any commission or brokerage paid or to be paid in connection with the issue or sale of shares or debentures to any director ; to the managing agent, any partner of the managing agent, any firm in which the managing agent is a partner, and where the managing agent is a private company, any director thereof ; or to the manager.

(4) The statutory report shall be certified as correct by not less than two directors of the company one of whom shall be a managing director, where there is one.

After the statutory report has been certified as aforesaid, the auditors, if any, of the company shall, in so far as the report relates to the shares allotted by the company, the cash received in respect of such shares and the receipts and payments of the company on capital account, certify it as correct.

(5) The directors shall cause a copy of the statutory report certified as required by this section to be delivered to the Registrar for registration forthwith, after copies thereof have been sent to the members of the company

(6) The directors shall cause a list showing the names, addresses and descriptions of the members of the company, and the number of shares held by

them respectively, to be produced at the commencement of the statutory meeting, and to remain open and accessible to any member of the company during the continuance of the meeting.

(7) The members of the company present at the meeting shall be at liberty to discuss any matter relating to the formation of the company or arising out of the statutory report, whether previous notice has been given or not, but no resolution may be passed of which notice has not been given in accordance with the articles.

(8) The meeting may adjourn from time to time, and at any adjourned meeting, any resolution of which notice has been given in accordance with the articles, either before or after the former meeting, may be passed, and the adjourned meeting shall have the same powers as an original meeting.

(9) If default is made in complying with the provisions of this section, every director or other officer of the company who is in default shall be punishable with fine which may extend to five hundred rupees.

(10) This section shall not apply to a private company.

**159. Annual general meeting.**—(1) (a) Every company shall, in addition to any other meetings, hold a general meeting which shall be styled its annual general meeting at the intervals, and in accordance with the provisions, specified below.

(b) The first annual general meeting shall be held by a company within eighteen months of its incorporation.

(c) The next annual general meeting of the company shall be held by it within nine months of the expiry of the financial year in which the first annual general meeting was held; and thereafter an annual general meeting shall be held by the company within nine months of the expiry of each financial year:

Provided that the Registrar may, for any special reason, extend the time within which any annual general meeting shall be held by a further period not exceeding six months.

(d) Except in the case referred to in the foregoing proviso, not more than fifteen months shall elapse between the date of one annual general meeting and that of the next.

(2) Every annual general meeting shall be called for a time during business hours on a day that is not a holiday, and shall be held either at the registered office of the company or at some other place within the town or village in which the registered office of the company is situate; and the notices calling the meeting shall specify it as the annual general meeting.

*Explanation.*—For the purposes of this sub-section, a day shall not be deemed to be a holiday unless it is a public holiday within the meaning of the Negotiable Instruments Act, 1881 (XXVI of 1881) and, in the case of a day declared by the Central Government to be a public holiday under that Act, unless further the declaration was notified before the issue of the notice convening the meeting.

(3) If default is made in holding a meeting of the company in accordance with sub-sections (1) and (2), the Central Government may, on the application of any member of the company, call, or direct the calling of, a general meeting of the company and give such ancillary or consequential directions as

the Central Government thinks expedient, including directions modifying or supplementing in relation to the calling, holding and conducting of the meeting, the operation of the company's articles.

*Explanation.*—The directions that may be given under this sub-section may include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

(4) A general meeting held in pursuance of sub-section (3) shall, subject to any directions of the Central Government, be deemed to be an annual general meeting of the company.

(5) If default is made in holding a meeting of the company in accordance with sub-sections (1) and (2), or in complying with any directions of the Central Government under sub-section (3), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five thousand rupees.

**160. Calling of extraordinary general meeting on requisition.**—(1) The directors of a company shall, on the requisition of—

(a) members of the company holding at the date of the deposit of the requisition not less than one-tenth of such of the paid-up capital of the company as at that date carries the right of voting at general meetings of the company, or

(b) in the case of a company not having a share capital, members of the company representing not less than one-tenth of the total voting power of all the members having at the said date a right to vote at general meetings of the company,

forthwith proceed duly to call an extraordinary general meeting of the company.

(2) The requisition shall state the objects of the meeting, shall be signed by the requisitionists and shall be deposited at the registered office of the company.

(3) The requisition may consist of several documents in like form, each signed by one or more requisitionists.

(4) If the directors do not, within twenty-one days from the date of the deposit of the requisition, proceed duly to call a meeting, the meeting may be called—

(a) by the requisitionists themselves, or

(b) by such of the requisitionists as represent either a majority in value of the paid-up share capital held by all of them or not less than one-tenth of such of the paid-up share capital of the company as is referred to in clause (a) of sub-section (1), whichever is less, or

(c) by such of the requisitionists as represent either a majority in voting power of the aggregate voting power possessed by all of them, or not less than one-tenth of the total voting power of all the members of the company referred to in clause (b) of sub-section (1), whichever is less.

*Explanation.*—For the purposes of this sub-section, the directors shall, in the case of a meeting at which a resolution is to be proposed as a special resolution, be deemed not to have duly convened the meeting if they do not give such notice thereof as is required by sub-section (2) of section 181.

(5) A meeting called under sub-section (4) by the requisitionists or any of them—

(a) shall be called in the same manner, as nearly as possible, as that in which meetings are to be called by directors ; but

(b) shall not be held after the expiration of three months from the date of the deposit of the requisition.

(6) Where two or more persons hold any shares or interest in a company jointly, a requisition, or a notice calling a meeting, signed by one or some only of them shall, for the purposes of this section, have the same force and effect as if it had been signed by all of them.

(7) Any reasonable expenses incurred by the requisitionists by reason of the failure of the directors duly to call a meeting shall be repaid to the requisitionists by the company, and any sum so repaid shall be retained by the company out of any sums due or to become due from the company by way of fees or other remuneration for their services to such of the directors as were in default.

**161. Sections 162 to 178 to apply to meetings and procedure thereat.**—(1) The provisions of sections 162 to 178—

(i) shall, notwithstanding anything to the contrary in the articles of the company, apply with respect to general meetings, and the procedure at general meetings, of a public company, and of a private company which is a subsidiary of a public company; and

(ii) shall, to the extent specified therein and unless the articles of the company otherwise provide, apply with respect to general meetings, and the procedure at general meetings, of a private company which is not a subsidiary of a public company.

(2) (a) Section 167, with such adaptations and modifications, if any as may be prescribed, shall apply with respect to meetings of any class of members, or of debenture holders or any class of debenture holders, of a company, in like manner as it applies with respect to general meetings of the company.

(b) Unless the articles of the company or a contract binding on the persons concerned otherwise provide, sections 162 to 166 and sections 167 to 178 with such adaptations and modifications, if any as may be prescribed, shall apply with respect to meetings of any class of members, or of debenture-holders or any class of debenture holders of a company, in like manner as they apply with respect to general meetings of the company.

**162. Length of notice for calling meeting.**—(1) A meeting of the company may be called by giving not less than twenty-one days' notice in writing, exclusive of the day on which the notice is served or deemed to be served and of the day of the meeting.

(2) A meeting may be called after giving shorter notice than that specified in sub-section (1), if consent is accorded thereto—

(i) in the case of an annual general meeting, by all the members entitled to vote thereat ; and

- (ii) in the case of any other meeting, by members of the company
- (a) holding, if the company has a share capital, not less than 95 per cent of such part of the paid-up share capital of the company as gives a right to vote at the meeting, or
  - (b) representing, if the company has no share capital, not less than 95 per cent of the total voting power exercisable at that meeting :

Provided that where any members of a company are entitled to vote only on some resolution or resolutions to be moved at a meeting and not on the others, those members shall be taken into account for the purposes of this sub-section in respect of the former resolution or resolutions and shall not be taken into account in respect of the latter ; the former resolution or resolutions shall be included in the business to be transacted at the meeting if, and only if, consent is accorded thereto by all the members of the company including the members aforesaid, or such majority of them as is specified in clause (ii); and the latter resolution or resolutions shall be included in the business to be transacted at the meeting if, and only if, consent is accorded thereto by all the members of the company excluding the members aforesaid or such majority of them as is specified in clause (ii).

**163. Contents and manner of service of notice and persons on whom it is to be served.**—(1) Every notice given of a meeting of a company shall specify the place and the day and hour of the meeting, and shall contain a statement of the business to be transacted thereat.

(2) Notice of every meeting of the company shall be given in any manner authorised by this Act to—

- (i) every member of the company except those members who, having no registered address in India, have not supplied to the company an address in India for the giving of notices to them ;
- (ii) every person upon whom the ownership of a share devolves in consequence of the death or insolvency of a member, who, if he were alive or had not become insolvent, would be entitled to receive notice of the meeting ;
- (iii) the auditor or auditors for the time being of the company.

(3) The accidental omission to give notice to, or the non-receipt of notice by, any member or other person to whom it should be given shall not invalidate the proceedings at the meeting.

**164. Explanatory statement to be annexed to notice.**—(1) For the purposes of this section—

- (a) in the case of an annual general meeting, all business to be transacted at the meeting shall be deemed special, with the exception of business relating to (i) the declaration of a dividend, (ii) the consideration of the accounts, balance sheet and the reports of the directors and auditors, (iii) the appointment of directors in the place of those retiring, and (iv) the appointment of, and the fixing of the remuneration of, the auditors ; and
- (b) in the case of any other meeting, all business shall be deemed special.

(2) Where any item of business to be transacted at the meeting is deemed to be special as aforesaid, there shall be annexed to the notice of the meeting a statement setting out all material facts concerning each such item of business, including in particular the nature and extent of the interest, if any, therein, of every director, the managing agent, and the manager.

(3) Where any item of business consists of the according of approval to any document by the meeting, the time and place where the document can be inspected shall be specified in the statement aforesaid.

**165. Quorum for meeting.**—Unless the articles of the company otherwise provide, five members personally present in the case of a public company, and two members personally present in the case of a private company, shall be the quorum for a meeting of the company.

**166. Chairman of meeting.**—(1) Unless the articles of the company otherwise provide, the members personally present at the meeting shall elect one of themselves to be the chairman thereof, on a show of hands.

(2) If a poll is demanded on the election of the chairman, it shall be taken forthwith in accordance with the provisions of this Act, the chairman elected on a show of hands exercising all the powers of the chairman under the said provisions.

(3) If some other person is elected chairman as a result of the poll, he shall be chairman for the rest of the meeting.

**167. Proxies.**—(1) Any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person (whether a member or not) as his proxy to attend and vote instead of himself; and a proxy so appointed by a member of a private company shall also have the same right as the member to speak at the meeting :

Provided that, unless the articles otherwise provide,—

- (a) this sub-section shall not apply in the case of a company not having a share capital ;
- (b) a member of a private company shall not be entitled to appoint more than one proxy to attend on the same occasion; and
- (c) a proxy shall not be entitled to vote except on a poll.

(2) In every notice calling a meeting of a company which has a share capital, or the articles of which allow voting by proxy at the meeting, there shall appear with reasonable prominence a statement that a member entitled to attend and vote is entitled to appoint a proxy, or, where that is allowed, one or more proxies, to attend and vote instead of himself, and that a proxy need not be a member.

If default is made in complying with this sub-section as respects any meeting, every officer of the company who is in default shall be punishable with fine which may extend to five hundred rupees.

(3) Any provision contained in the articles of a public company or of a private company which is a subsidiary of a public company shall be void, in so far as it would have the effect of requiring the instrument appointing a proxy, or any other document necessary to show the validity of or otherwise relating to the appointment of a proxy, to be received by the company or any other person more than forty-eight hours before the meeting in order that the appointment may be effective thereat.

(4) If for the purpose of any meeting of a company, invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the company's expense to any member entitled to have a notice of the meeting sent to him and to vote thereat by proxy, every officer of the

company who knowingly issues the invitations as aforesaid or authorises or permits their issue shall be punishable with fine which may extend to one thousand rupees :

Provided that an officer shall not be punishable under this sub-section by reason only of the issue to a member at his request in writing of a form of appointment naming the proxy or of a list of persons willing to act as proxies, if the form or list is available on request in writing to every member entitled to vote at the meeting by proxy.

(5) The instrument appointing a proxy shall—

(a) be in writing ; and

(b) be signed by the appointer or his attorney duly authorised in writing or, if the appointer is a body corporate, be under its seal or be signed by an officer or an attorney duly authorised by it.

(6) An instrument appointing a proxy, if in the form set out in Schedule IX, shall not be questioned on the ground that it fails to comply with any special requirements specified for such instrument by the articles.

(7) Every member entitled to vote at a meeting of the company or on any resolution to be moved thereat shall be entitled during the period beginning twenty-four hours before the commencement of the meeting and ending with the conclusion of the meeting, to inspect the proxies lodged, at any time during the business hours of the company, provided not less than three days' notice in writing of the intention so to inspect is given to the company.

**168. Voting to be by show of hands in first instance.**—At any general meeting, a resolution put to the vote of the meeting shall, unless a poll is demanded under section 170, be decided on a show of hands.

**169. Chairman's declaration of result of voting by show of hands to be conclusive.**—A declaration by the chairman in pursuance of section 168 that a resolution has been carried on a show of hands, or has been carried either unanimously or by a particular majority, or has been lost, and an entry to that effect in the books containing the minutes of the proceedings of the company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution.

**170. Demand for poll.**—(1) Before or on the declaration of the result of the voting on any resolution on a show of hands, a poll may be ordered to be taken by the chairman of the meeting of his own motion, and shall be ordered to be taken by him on a demand made by the person or persons specified below, that is to say, —

(a) in the case of a public company, by at least five members having the right to vote on the resolution and present in person or by proxy, or

(b) in the case of a private company, by one member having the right to vote on the resolution and present in person or by proxy if not more than seven such members are personally present, and by two such members present in person or by proxy if more than seven such members are personally present, or

(c) by any member or members present in person or by proxy and representing not less than one-tenth of the total voting power in respect of the resolution , or



(d) by any member or members present in person or by proxy and holding shares in the company conferring a right to vote on the resolution, being shares on which an aggregate sum has been paid up which is not less than one-tenth of the total sum paid up on all the shares conferring that right.

(2) The demand for a poll may be withdrawn at any time by the person or persons who made the demand.

**171. Time of taking poll.**—(1) A poll demanded on a question of adjournment shall be taken forthwith.

(2) A poll demanded on any other question (not being a question relating to the election of a chairman which is provided for in section 166) shall be taken at such time (not being later than forty-eight hours from the time when the demand was made) as the chairman may direct.

**172. Voting rights of members on a poll.**—On a poll, the voting rights of members, that is to say, of persons whose names stand entered for the time being in the register of members of the company, shall be as laid down in section 80, and the votes may be given by the members themselves personally or by their proxies or by persons duly authorised by the members by a power of attorney.

**173. Members who have not paid calls etc. not to vote.**—The articles of a company may provide that no member shall have any voting right in respect of any shares registered in his name on which any calls or other sums presently payable by him have not been paid or in regard to which the company has, and has exercised, any right of lien.

**174. Articles restricting voting right in other cases to be void.**—A public company or a private company which is a subsidiary of a public company shall not prohibit any member from voting on the ground that he has not held his share (or other interest) in the company for any specified period preceding the date on which the vote is taken, or on any other ground not being a ground set out in section 173.

**175. Right of member to use his votes differently.**—On a poll taken at a meeting of a company, a member entitled to more than one vote, or his proxy, as the case may be, need not, if he votes, use all his votes or cast in the same way all the votes he uses.

**176. Scrutineers at poll.**—(1) Where a poll is to be taken, the chairman of the meeting shall appoint two scrutineers to scrutinise the votes given on the poll and to report thereon to him.

(2) The chairman shall have power, at any time before the result of the poll is declared, to remove a scrutineer from office and to fill vacancies in the office of scrutineer arising from such removal or from any other cause.

(3) Of the two scrutineers appointed under this section, one shall always be a member (not being an officer or employee of the company) present at the meeting, provided such a member is available and willing to be appointed.

**177. Manner of taking poll and result thereof.**—(1) Subject to the provisions of this Act, the chairman of the meeting shall have power to regulate the manner in which a poll shall be taken.

(2) The result of the poll shall be deemed to be the resolution of the meeting on the question on which the poll was taken.

**178. Power of Court to order meeting to be called.**—(1) If for any reason it is impracticable to call a meeting of a company other than an annual general meeting in any manner in which meetings of that company may be called or to hold or conduct the meeting of the company in the manner prescribed by this Act and the articles, the Court may, either of its own motion or on the application of any director of the company or of any member of the company who would be entitled to vote at the meeting,—

- (a) order a meeting of the company to be called, held and conducted in such manner as the Court thinks fit ; and
- (b) give such ancillary or consequential directions as the Court thinks expedient, including directions modifying or supplementing in relation to the calling, holding and conducting of the meeting, the operation of the company's articles.

*Explanation.*—The directions that may be given under this sub-section may include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

(2) Any meeting called, held and conducted in accordance with any such order shall, for all purposes, be deemed to be a meeting of the company duly called, held and conducted.

**179. Representation of corporations at meeting of companies and of creditors.**—(1) A body corporate (whether a company within the meaning of this Act or not), may—

- (a) if it is a member of a company within the meaning of this Act, by resolution of its directors or other governing body, authorise such person as it thinks fit to act as its representative at any meeting of the company, or at any meeting of any class of members of the company ;
- (b) if it is a creditor (including a holder of debentures) of a company within the meaning of this Act, by resolution of its directors or other governing body, authorise such person as it thinks fit to act as its representative at any meeting of any creditors of the company held in pursuance of this Act or of any rules made thereunder, or in pursuance of the provisions contained in any debenture or trust deed, as the case may be.

(2) A person authorised by resolution as aforesaid shall be entitled, in respect of the matters and to the extent specified in the resolution, to exercise the same rights and powers (including the right to vote by proxy) on behalf of the body corporate which he represents as that body could exercise if it were an individual shareholder, creditor or holder of debentures of that other company.

**180. Circulation of members' resolutions.**—(1) Subject to the provisions of this section, a company shall, on the requisition in writing of such number of members as is hereinafter specified and (unless the company otherwise resolves) at the expense of the requisitionists—

- (a) give to members of the company entitled to receive notice of the next annual general meeting, notice of any resolution which may properly be moved and is intended to be moved at that meeting ;

- (b) circulate to members entitled to have notice of any general meeting sent to them, any statement of not more than one thousand words with respect to the matter referred to in any proposed resolution or the business to be dealt with at that meeting.

(2) The number of members necessary for a requisition under sub-section (1) shall be —

- (a) such number of members as represent not less than one-twentieth of the total voting power of all the members having at the date of the requisition a right to vote on the resolution or business to which the requisition relates ; or
- (b) not less than one hundred members having the right aforesaid and holding shares in the company on which there has been paid up an aggregate sum of not less than one lakh of rupees in all.

(3) Notice of any such resolution shall be given, and any such statement shall be circulated, to members of the company entitled to have notice of the meeting sent to them, by serving a copy of the resolution or statement on each member in any manner permitted for service of notice of the meeting ; and notice of any such resolution shall be given to any other member of the company by giving notice of the general effect of the resolution in any manner permitted for giving him notice of meetings of the company :

Provided that the copy shall be served, or notice of the effect of the resolution shall be given, as the case may be, in the same manner and, so far as practicable, at the same time as notice of the meeting and, where it is not practicable for it to be served or given at that time, it shall be served or given as soon as practicable thereafter.

(4) A company shall not be bound under this section to give notice of any resolution or to circulate any statement unless—

- (a) a copy of the requisition signed by the requisitionists (or two or more copies which between them contain the signatures of all the requisitionists) is deposited at the registered office of the company—
  - (i) in the case of a requisition requiring notice of a resolution, not less than six weeks before the meeting ; and
  - (ii) in the case of any other requisition, not less than seven days before the meeting ; and
- (b) there is deposited or tendered with the requisition a sum reasonably sufficient to meet the company's expenses in giving effect thereto ;

Provided that if, after a copy of a requisition requiring notice of a resolution has been deposited at the registered office of the company, an annual general meeting is called for a date six weeks or less after the copy has been deposited, the copy, although not deposited within the time required by this sub-section, shall be deemed to have been properly deposited for the purposes thereof.

(5) The company shall also not be bound under this section to circulate any statement if, on the application either of the company or of any other person who claims to be aggrieved, the Court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter ; and the Court may order the company's costs on an application under this section to be paid in whole or in part by the requisitionists, notwithstanding that they are not parties to the application.

(6) Notwithstanding anything in the company's articles, the business which may be dealt with at an annual general meeting shall include any resolution of which notice is given in accordance with this section, and for the purposes of this sub-section, notice shall be deemed to have been so given, notwithstanding the accidental omission, in giving it, of one or more members.

(7) If default is made in complying with the provisions of this section, every officer of the company who is in default shall be punishable with fine which may extend to five thousand rupees.

**181. Ordinary and special resolutions.**—(1) A resolution shall be an ordinary resolution when at a general meeting of which the notice required under this Act has been duly given, the votes cast in favour of the resolution (including the casting vote, if any of the chairman) by members who, being entitled so to do, vote in person, or where proxies are allowed, by proxy, exceed the votes, if any, cast against the resolution by members so entitled and voting.

(2) A resolution shall be a special resolution when—

(a) the intention to propose the resolution as a special resolution has been duly specified in the notice calling the general meeting,

(b) the notice required under this Act has been duly given of the general meeting, and

(c) the votes cast in favour of the resolution by members who, being entitled so to do, vote in person, or where proxies are allowed, by proxy, are not less than three times the number of the votes, if any, cast against the resolution by members so entitled and voting.

(3) For the purposes of this section, notice of a meeting shall be deemed to be duly given and the meeting to be duly held when the notice is given and the meeting is held in the manner provided by this Act.

(4) Nothing contained in the foregoing sub-sections shall affect the right to vote on ordinary or special resolutions or both given to any person, not being a shareholder, by any contract (not being a contract relating to the right to manage any of the affairs of the company) entered into with such person by the company before the commencement of this Act.

**182. Resolutions requiring special notice.**—(1) Where, by any provision contained in this Act or in the articles, special notice is required of any resolution, notice of the intention to move the resolution shall be given to the company not less than twenty-eight days before the meeting at which it is to be moved, exclusive of the day on which the notice is served or deemed to be served and the day of the meeting.

(2) The company shall give its members notice of any such resolution at the same time and in the same manner as it gives notice of the meeting or, if that is not practicable, shall give them notice thereof, either by advertisement in a newspaper having an appropriate circulation or in any other mode allowed by the articles, not less than twenty-one days before the meeting.

(3) If, after notice of the intention to move such a resolution has been given to the company, a meeting is called for a date twenty-eight days or less after the notice has been given, the notice, though not given within the time required by this section, shall be deemed to have been properly given for the purposes thereof.

**183. Resolutions passed at adjourned meetings.**—Where a resolution is passed at an adjourned meeting of—

- (a) a company ; or
- (b) the holders of any class of shares in a company ; or
- (c) the directors of a company ;

the resolution shall, for all purposes, be treated as having been passed on the date on which it was in fact passed, and shall not be deemed to have been passed on any earlier date.

**184. Registration and copies of certain resolutions and agreements.**—(1) A copy of every resolution or agreement to which this section applies shall, within fifteen days after the passing or making thereof, be printed or typewritten and duly certified under the signature of an officer of the company and filed with the Registrar who shall record the same.

(2) Where articles have been registered, a copy of every such resolution or agreement for the time being in force shall be embodied in or annexed to every copy of the articles issued after the passing of the resolution or the making of the agreement.

(3) Where articles have not been registered, a printed copy of every such resolution or agreement shall be forwarded to any member at his request, on payment of one rupee.

(4) This section shall apply to—

- (a) special resolutions ;
- (b) resolutions which have been agreed to by all the members of a company, but which, if not so agreed to, would not have been effective for their purpose unless they had been passed as special resolutions ;
- (c) any agreement relating to the appointment, re-appointment or renewal of the appointment of a managing agent for a company, or varying the terms of any such agreement, executed by the company ;
- (d) resolutions or agreements which have been agreed to by all the members of any class of shareholders but which, if not so agreed to, would not have been effective for their purpose unless they had been passed by some particular majority or otherwise in some particular manner, and all resolutions or agreements which effectively bind all the members of any class of shareholders though not agreed to by all those members ;
- (e) resolutions requiring a company to be wound up voluntarily passed under sub-section (1) of section 450.

(5) If default is made in complying with sub-section (1), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to twenty rupees for every day during which the default continues.

(6) If in complying with sub-section (2) or (3), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to ten rupees for each copy in respect of which default is made.

(7) For the purposes of sub-sections (5) and (6), a liquidator of the company shall be deemed to be an officer of the company.

**185. Minutes of proceedings of general meetings and of directors' meetings etc.**—(1) Every company shall cause minutes of all proceedings of general meetings, and of all proceedings at meetings of its directors or of committees of its directors, to be entered in books kept for that purpose.

(2) The minutes of each meeting shall contain a fair and correct summary of the proceedings thereat, and in particular, of all material questions asked, or comments made at the meeting.

(3) All appointments of officers made at any of the meetings aforesaid shall be included in the minutes of the meeting.

(4) In the case of a meeting of the directors or of a committee of the directors, the minutes shall also contain—

(a) the names of the directors present at the meeting, and

(b) in the case of each resolution passed at the meeting, the name of the directors, if any, dissenting from, or not concurring in, the resolution.

(5) Nothing contained in sub-sections (1) to (4) shall be deemed to require the inclusion in any such minutes of any matter which, in the opinion of the chairman of the meeting—

(a) is or could reasonably be regarded as defamatory of any person, or

(b) is irrelevant or immaterial to the proceedings, or

(c) is detrimental to the interests of the company.

*Explanation.*—The chairman shall exercise an absolute discretion in regard to the non-inclusion of any matter in the minutes on the grounds specified in sub-section (5).

(6) If default is made in complying with the foregoing provisions of this section in respect of any meeting, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty rupees.

**186. Minutes to be evidence of proceedings.**—Any such minute, if purporting to be signed by the chairman of the meeting at which the proceedings took place or by the chairman of the next succeeding meeting, shall be evidence of the proceedings.

**187. Presumptions to be drawn where minutes duly drawn and signed.**—Where minutes of the proceedings of any general meeting of the company or of any meeting of its directors or of a committee of its directors have been made and signed in accordance with the provisions of sections 185 and 186, then, until the contrary is proved, the meeting shall be deemed to have been duly called and held, and all proceedings thereat to have duly taken place; and in particular all appointments of directors or liquidators made at the meeting shall be deemed to be valid.

**188. Inspection of minute books of general meetings.**—(1) The books containing the minutes of the proceedings of any general meeting of a company held on or after 15th day of January 1937 shall—

(a) be kept at the registered office of the company, and

(b) be open, during business hours, to the inspection of any member without charge, subject to such reasonable restrictions as the company may, by its articles or in general meeting impose, so however that not less than two hours in each day are allowed for inspection.

(2) Any member shall be entitled to be furnished, within seven days after he has made a request in that behalf to the company, with a copy of any minutes referred to in sub-section (1), on payment of six annas for every one hundred words or fractional part thereof required to be copied.

(3) If any inspection required under sub-section (1) is refused, or if any copy required under sub-section (2) is not furnished within the time specified therein, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees in respect of each offence.

(4) In the case of any such refusal or default, the Court may, by order, compel an immediate inspection of the minute books or direct that the copy required shall forthwith be sent to the person requiring it.

**189. Publication of reports of proceedings of general meetings.—**

(1) No document purporting to be a report of the proceedings of any general meeting of a company shall be circulated or advertised at the expense of the company, unless it includes the matters required by section 185 to be contained in the minutes of the proceedings of such meeting.

(2) If any report is circulated or advertised in contravention of sub-section (1), the company, and every officer of the company who is in default, shall be punishable, in respect of each offence, with fine which may extend to five hundred rupees.

*Dividends and manner and time of payment thereof*

**190. Dividend to be paid only out of profits.**—No dividend shall, be paid in respect of any financial year otherwise than out of the profits of that year or the undistributed profits of previous financial years.

*Explanation.*—Nothing in this section shall be deemed to affect in any manner the operation of section 193.

**191. Dividend not to be paid except to registered shareholders or to their order or to their bankers.**—(1) No dividend shall be paid by a company in respect of any share therein except to the registered holder of such share or to his order or to his bankers.

(2) Nothing contained in sub-section (1) shall be deemed to require the bankers of the registered shareholder to make a separate application to the company for the payment of the dividend.

**192. Penalty for failure to distribute dividends within three months.**—Where a dividend has been declared by a company, but has not been paid within three months from the date of the declaration to any shareholder entitled to the payment of the dividend, every director of the company its managing agent, or where the managing agent is a firm or body corporate, every partner in the firm and every director of the body corporate shall, if he is knowingly a party to the non-payment of the dividend, be punishable with simple imprisonment for a term which may extend to seven days and shall also be liable to fine :

Provided that no offence shall be deemed to have been committed within the meaning of the foregoing provision in the following cases, namely :—

- (a) where the dividend could not be paid by reason of the operation of any law ;
- (b) where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with ;
- (c) where there is a dispute regarding the right to receive any dividend.

*Payments of interest out of capital*

**193. Power of company to pay interest out of capital in certain cases.**—(1) Where any shares of a company are issued for the purpose of raising money to defray the expenses of the construction of any work or building or the provision of any plant, which cannot be made profitable for a lengthy period, the company may—

- (a) pay interest on so much of that share capital as is for the time being paid up, for the period and subject to the conditions and restrictions mentioned in sub-sections (2) to (7) ; and
- (b) charge the sum so paid by way of interest, to capital as part of the cost of construction of the work or building, or the provision of plant.

(2) No such payment shall be made unless it is authorised by the articles or by special resolution.

(3) No such payment, whether authorised by the articles or by special resolution, shall be made without the previous sanction of the Central Government.

The grant of such sanction shall be conclusive evidence, for the purposes of this section, that the shares of the company, in respect of which such sanction is given, have been issued for a purpose specified in this section.

(4) Before sanctioning any such payment, the Central Government may, at the expense of the company, appoint a person to inquire into, and report to the Central Government on, the circumstances of the case, and may, before making the appointment, require the company to give security for the payment of the costs of the inquiry.

(5) The payment shall be made only for such period as may be determined by the Central Government ; and that period shall in no case extend beyond the close of the half-year next after the half-year during which the work or building has been actually completed or the plant provided.

(6) The rate of interest shall in no case exceed four per cent per annum or such other rate as the Central Government may, by notification in the Official Gazette, direct.

(7) The payment of the interest shall not operate as a reduction of the amount paid up on the shares in respect of which it is paid.

(8) Nothing in this section shall affect any company to which the Indian Railway Companies Act, 1895 (X of 1895), or the Indian Tramways Act, 1902 (IV of 1902), applies.



*Account*

**194. Books to be kept by company and penalty for not keeping proper books.**—(1) Every company shall cause to be kept, at its registered office or at such other place in India as the directors think fit, proper books of account with respect to—

- (a) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure take place;
- (b) all sales and purchases of goods by the company ;
- (c) the assets and liabilities of the company.

(2) Where a company has a branch office, whether in or outside India, the company shall be deemed to have complied with the provisions of sub-section (1), if proper books of account relating to the transactions effected at the branch office are kept at that office and proper summarised returns, made up to dates at intervals of not more than three months, are sent by the branch office to the company at its registered office or the other place referred to in sub-section (1).

(3) For the purposes of sub-sections (1) and (2), proper books of account shall not be deemed to be kept with respect to the matters specified therein if there are not kept such books as are necessary to give a true and fair view of the state of the affairs of the company or branch office, as the case may be, and to explain its transactions.

(4) The books of account shall at all times be open to inspection by any director.

(5) If any of the persons referred to in sub-section (6) fails to take all reasonable steps to secure compliance by the company with the requirements of this section, or has by his own wilful act been the cause of any default by the company thereunder, he shall, in respect of each offence, be punishable with fine which may extend to one thousand rupees :

Provided that in any proceedings against a person in respect of an offence under this section consisting of a failure to take reasonable steps to secure compliance by the company with the requirements of this section, it shall be a defence to prove that he had reasonable ground to believe and did believe that a competent and reliable person was charged with the duty of seeing that those requirements were complied with and was in a position to discharge that duty.

(6) The persons referred to in sub-section (5) are the following, namely:—

- (a) where the company has a managing agent, such managing agent
- (b) where such managing agent is a firm, every partner in the firm,
- (c) where such managing agent is a body corporate, every director of such body, and
- (d) where the company has no managing agent, every director of the company.

**195. Annual accounts and balance sheet.**—(1) At every annual general meeting of a company held in pursuance of section 159, the directors of the company shall lay before the company —

- (a) a balance sheet as at the end of the period specified in sub-section (3) ; and
- (b) a profit and loss account for that period.

(2) In the case of a company not carrying on business for profit, an income and expenditure account shall be laid before the company at its annual general meeting instead of a profit and loss account, and all references to the "profit and loss account", "profit" and "loss" in this section and elsewhere in this Act, shall be construed, in relation to such a company, as references respectively to the "income and expenditure account," "the excess of income over expenditure," and "the excess of expenditure over income".

(3) The profit and loss account shall—

(a) in the case of the first annual general meeting of the company, relate to the period beginning with the incorporation of the company and ending with a day which shall not be earlier than the day of the meeting by more than nine months ; and

(b) in the case of any subsequent annual general meeting of the company, relate to the period beginning with the day immediately after the period for which the account was last submitted and ending with a day which shall not be earlier than the day of the meeting by more than nine months, or in cases where an extension of time has been granted for holding the meeting under the proviso to section 159 (1) (c), by more than nine months and the extension so granted.

(4) The period to which the account aforesaid relates is referred to in this Act as a "financial year" and it may be less or more than a calendar year, but shall not exceed fifteen months :

Provided that it may extend to eighteen months where special permission has been granted in that behalf by the Registrar.

(5) If any person, being a director of a company, fails to take all reasonable steps to comply with the provisions of this section, he shall, in respect of each offence, be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both :

Provided that in any proceedings against a person in respect of an offence under this section, it shall be a defence to prove that he had reasonable ground to believe and did believe that a competent and reliable person was charged with the duty of seeing that the provisions of this section were complied with and was in a position to discharge that duty:

Provided further that no person shall be sentenced to imprisonment for any such offence unless it was committed wilfully.

**196. Form and contents of balance sheet and profit and loss account.**—(1) Every balance sheet of a company shall give a true and fair view of the state of affairs of the company as at the end of the financial year and shall, subject to the provisions of sub-sections (3) and (4), be in the form set out in Part I of Schedule VI, or as near thereto as circumstances admit.

(2) Every profit and loss account of a company shall give a true and fair view of the profit or loss of the company for the financial year and shall, subject as aforesaid, comply with the requirements of Part II of Schedule VI, so far as they are applicable thereto.

(3) The Central Government may, by notification in the Official Gazette, exempt any company or class of companies from compliance with any of the requirements in Schedule VI if, in its opinion, it is necessary to grant the exemption in the national interest.

Any such exemption may be granted either unconditionally or subject to such conditions as may be specified in the notification

(4) The Central Government may, on the application or with the consent of a company's directors, by order, modify in relation to that company any of the requirements of this Act as to the matters to be stated in the company's balance sheet or profit and loss account for the purpose of adapting them to the circumstances of the company.

(5) The balance sheet and the profit and loss account of a company shall not be treated as not disclosing a true and fair view of the state of affairs of the company, merely by reason of the fact that they do not disclose—

- (i) in the case of a banking company, any matters which are not required to be disclosed by the Banking companies Act, 1949 (X of 1949),
- (ii) in the case of an insurance company, any matters which are not required to be disclosed by the Insurance Act, 1938 (IV of 1938),
- (iii) in the case of any other company, any matters which are not required to be disclosed by virtue of the provisions contained in Schedule VI or by virtue of a notification issued under sub-section (3) or an order issued under sub-section (4) ;

(6) For the purposes of this section, except where the context otherwise requires, any reference to a balance sheet or profit and loss account shall include any notes thereon or documents annexed thereto, giving information required by this Act, and allowed by it to be given in the form of such notes or documents.

(7) If any such person as is referred to in sub-section (6) of section 194 fails to take all reasonable steps to secure compliance by the company, as respects any accounts laid before the company in general meeting, with the provisions of this section and with the other requirements of this Act as to the matters to be stated in the accounts, he shall, in respect of each offence, be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both :

Provided that in any proceedings against a person in respect of an offence under this section, it shall be a defence to prove that he had reasonable ground to believe and did believe that a competent and reliable person was charged with the duty of seeing that the provisions of this section were complied with and was in a position to discharge that duty:

Provided further that no person shall be sentenced to imprisonment for any such offence unless it was committed wilfully.

**197. Balance sheet of holding company to include certain particulars as to its subsidiaries.**—(1) There shall be attached to the balance sheet of a holding company having a subsidiary or subsidiaries at the end of the financial year as at which the holding company's balance sheet is made out, the following documents in respect of such subsidiary or of each such subsidiary, as the case may be :—

- (a) a copy of the balance sheet of the subsidiary ;
- (b) a copy of its profit and loss account ;
- (c) a copy of the report of its directors ;
- (d) a copy of the report of its auditors ;

(e) a statement of the holding company's interest in the subsidiary as specified in sub-section (3) ;

(f) the statement referred to in sub-section (5), if any ; and

(g) the report referred to in sub-section (6), if any.

(2) (a) The balance sheet referred to in clause (a) of sub-section (1) shall be made out, in accordance with the requirements of this Act, as at the end of the financial year of the subsidiary next before the day as at which the holding company's balance sheet is made out.

(b) The profit and loss account and the directors' and auditors' reports referred to in clauses (b), (c) and (d) of sub-section (1) shall be made out, in accordance with the requirements of this Act, for the financial year of the subsidiary referred to in clause (a).

(c) The financial year aforesaid of the subsidiary shall end on a day which is not earlier than six months from the day on which the holding company's financial year ends.

(d) Where the financial year of a subsidiary is shorter in duration than that of its holding company, references to the financial year of the subsidiary in clauses (a), (b) and (c) shall be construed as references to two or more financial years of the subsidiary the duration of which, in the aggregate, is not less than the duration of the holding company's financial year.

(3) The statement referred to in clause (e) of sub-section (1) shall specify—(a) the extent of the holding company's interest in the subsidiary at the end of the financial year or of the last of the financial years of the subsidiary referred to in sub-section (2) ;

(b) the net aggregate amount, so far as it concerns members of the holding company and is not dealt with in the company's accounts, of the subsidiary's profits after deducting its losses (or *vice versa*)—

(i) for the financial year or years of the subsidiary aforesaid ; and

(ii) for the previous financial years of the subsidiary since it became the holding company's subsidiary ;

(c) the net aggregate amount of the profits of the subsidiary after deducting its losses (or *vice versa*)—

(i) for the financial year or years of the subsidiary aforesaid ; and

(ii) for the previous financial years of the subsidiary since it became the holding company's subsidiary ;

so far as those profits are dealt with, or provision is made for those losses, in the company's accounts.

(4) Clauses (b) and (c) of sub-section (3) shall apply only to profits and losses of the subsidiary which may properly be treated in the holding company's accounts as revenue profits or losses, and the profits or losses attributable to any shares in a subsidiary for the time being held by the holding company or any other of its subsidiaries shall not (for that or any other

purpose) be treated as aforesaid so far as they are profits or losses for the period before the date on or as from which the shares were acquired by the company or any of its subsidiaries, except that they may in a proper case be so treated where—

- (a) the company is itself the subsidiary of another body corporate ;
- (b) the shares were acquired from that body corporate or a subsidiary of it ;

and for the purpose of determining whether any profits or losses are to be treated as profits or losses for the said period, the profit or loss for any financial year of the subsidiary may, if it is not practicable to apportion it with reasonable accuracy by reference to the facts, be treated as accruing from day to day during that year and be apportioned accordingly.

(5) Where the financial year or years of a subsidiary referred to in sub-section (2) do not coincide with the financial year of the holding company, a statement containing information on the following matters shall also be attached to the balance sheet of the holding company :—

- (a) whether there has been any, and, if so, what change in the holding company's interest in the subsidiary between the end of the financial year or of the last of the financial years of the subsidiary and the end of the holding company's financial year ;
- (b) details of any material changes which have occurred between the end of the financial year or of the last of the financial years of the subsidiary and the end of the holding company's financial year in respect of—
  - (i) the subsidiary's fixed assets ;
  - (ii) its investments ;
  - (iii) the moneys lent by it ;
  - (iv) the moneys borrowed by it for any purpose other than that of meeting current liabilities.

(6) If, for any reason, the directors of the holding company are unable to obtain information on any of the matters required to be specified by sub-section (4), a report in writing to that effect shall be attached to the balance sheet of the holding company.

(7) The documents referred to in clauses (e), (f) and (g) of sub-section (1) shall be signed by the persons by whom the balance sheet of the holding company is required to be signed.

(8) The Central Government may, on the application or with the consent of the company's directors, direct that in relation to any subsidiary, the provisions of this section shall not apply or shall apply only to such extent as may be specified in the direction.

(9) If any such person, as is referred to in sub-section (6) of section 194 fails to take all reasonable steps to comply with the provisions of this section, he shall, in respect of each offence, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both :

Provided that in any proceedings against a person in respect of an offence under this section, it shall be a defence to prove that he had reasonable ground to believe and did believe that a competent and reliable person was charged with the duty of seeing that the provisions of this section were complied with and was in a position to discharge that duty :

Provided further that no person shall be sentenced to imprisonment for such an offence unless it was committed wilfully.

**198. Financial year of holding company and subsidiary.—(1)** Where it appears to the Central Government desirable for a holding company or a holding company's subsidiary, to extend its financial year so that the subsidiary's financial year may end with that of the holding company, and for that purpose to postpone the submission of the relevant accounts to a general meeting, the Central Government may, on the application or with the consent of the directors of the company whose financial year is to be extended, direct that in the case of that company, the submission of accounts to a general meeting, the holding of an annual general meeting or the making of an annual return, shall not be required to be submitted, held or made, earlier than the dates specified in the direction, notwithstanding anything to the contrary in this Act or in any other Act for the time being in force.

(2) The Central Government shall, on the application of the directors of a holding company or a holding company's subsidiary exercise the powers conferred on that Government by sub-section (1) if it is necessary so to do, in order to secure that the end of the financial year of the subsidiary is not earlier than six months from that of the holding company's financial year, where that is not the case at the commencement of this Act, or at the date on which the relationship of holding company and subsidiary comes into existence, if later.

**199. Rights of holding company's representatives and members.—(1)** A holding company may, by resolution, authorise representatives named in the resolution to inspect the books of account kept by any of its subsidiaries ; and the books of account of any such subsidiary shall be open to inspection by those representatives at any time during business hours.

(2) The rights conferred by section 220 upon members of a company may be exercised, in respect of any subsidiary, by members of the holding company as if they alone were members of the subsidiary.

**200. Authentication of balance sheet and profit and loss account.—**  
(1) Save as provided by sub-section (2), every balance sheet and every profit and loss account of a company shall be signed on behalf of the board of directors—

(i) in the case of a banking company, by its managing agent, manager or secretary, if any, and where there are more than three directors of the company, by not less than three of those directors (one of whom shall be a managing director, where there is one) and where there are not more than three directors, by all the directors ;

(ii) in the case of any other company, by its managing agent, manager or secretary, if any, and by not less than two directors of the company one of whom shall be a managing director where there is one.

(2) When the total number of directors of the company for the time being in India is less than the number of directors whose signatures are required by sub-section (1), then, the balance sheet and the profit and loss account shall be signed by all the directors for the time being in India, or, if there is only one director for the time being in India, by such director; but in such a case there shall be attached to the balance sheet and the profit and loss account a statement signed by such directors or director explaining the reason for non-compliance with the provisions of sub-section (1).

(3) The balance sheet and the profit and loss account shall be approved by the board of directors before they are signed on behalf of the board in accordance with the provisions of this section and before they are submitted to the auditors for their report thereon.

**201. Accounts to be annexed and auditors' report to be attached to balance sheet.**—The profit and loss account shall be annexed to the balance sheet and the auditors' report shall be attached thereto.

**202. Directors' report.**—(1) There shall be attached to every balance sheet laid before a company in general meeting, a report by the directors with respect to—

- (a) the state of the company's affairs ;
- (b) the amounts, if any, which they propose to carry to any Reserve Fund either in such balance sheet or in a subsequent balance sheet ; and
- (c) the amount, if any, which they recommend should be paid, by way of dividend.

(2) The said report shall, so far as is material for the appreciation of the state of the company's affairs by its members and will not in the directors' opinion be harmful to the business of the company or of any of its subsidiaries, deal with any changes which have occurred during the financial year—

- (a) in the nature of the company's business ;
- (b) in the company's subsidiaries or in the nature of the business carried on by them ; and
- (c) generally in the classes of business in which the company has an interest, whether as a member of another company or otherwise.

(3) The directors shall also be bound to give the fullest information and explanations in their report aforesaid on every reservation, qualification or adverse remark contained in the auditors' report.

(4) The directors' report may be signed by the chairman of the board of directors, if, and only if, he is authorised in that behalf by the directors.

(5) If any person, being a director of a company, fails to take all reasonable steps to comply with the provisions of sub-sections (1) to (3), or being the chairman signs the directors' report otherwise than in conformity with the provisions of sub-section (4), he shall, in respect of each offence, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both :

Provided that no person shall be sentenced to imprisonment for any such offence unless it was committed wilfully.

**203. Penalty for improper issue, circulation or publication of balance sheet or profit and loss account.**—(a) If any copy of a balance sheet or profit and loss account which has not been signed as required by section 200 is issued, circulated or published ; or

(b) if any copy of a balance sheet is issued, circulated or published without there being annexed or attached thereto, as the case may be, a copy each of (i) the profit and loss account, (ii) any accounts, reports or statements which, by virtue of section 197, are required to be attached thereto, (iii) the auditors' report, and (iv) the directors' report referred to in section 202;

the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees.

**204. Right of member to copies of balance sheet and auditors' report.**—(1) A copy of every balance sheet (including the profit and loss account, the auditors' report and every other document required by law to be annexed or attached thereto, as the case may be) which is to be laid before a company in general meeting shall, not less than twenty-one days before the date of the meeting, be sent to every member of the company (whether he is or is not entitled to have notices of general meetings of the company sent to him), every trustee for the holders of debentures of the company (whether he is or is not so entitled) and all persons other than such members or trustees, being persons so entitled :

Provided that—

- (a) in the case of a company not having a share capital, this sub-section shall not require the sending of a copy of the documents aforesaid to a member of the company who is not entitled to have notices of general meetings of the company sent to him or to a holder of debentures of the company who is not so entitled ;
- (b) this sub-section shall not require a copy of those documents to be sent—
  - (i) to a member of the company or a holder of debentures of the company, being in either case a person who is not entitled to have notices of general meetings of the company sent to him and of whose address the company is unaware ;
  - (ii) to more than one of the joint holders of any shares or debentures, none of whom are entitled to have such notices sent to them ; or
  - (iii) in the case of joint holders of any shares or debentures some of whom are and some of whom are not entitled to have such notices sent to them, to those who are not so entitled ; and
- (c) if the copies of the documents aforesaid are sent less than twenty-one days before the date of the meeting, they shall, notwithstanding that fact, be deemed to have been duly sent if it is so agreed by all the members entitled to vote at the meeting.

(2) Any member of a company, whether he is or is not entitled to have copies of the company's balance sheet sent to him, and any holder of debentures of the company, whether he is or is not so entitled, shall, on demand, be entitled to be furnished without charge, with a copy of the last balance sheet of the company, including every document required by law to be annexed or attached thereto, as the case may be, including the profit and loss account and the auditors' report.

(3) If default is made in complying with sub-section (1), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees.

(4) If, when any person makes a demand for a copy of any document with which he is entitled to be furnished by virtue of sub-section (2), default is made in complying with the demand within seven days after the making thereof, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees unless it is proved that that person had already made a demand for and been furnished with a copy of the document.

The Court may also, by order, direct that the copy demanded shall forthwith be furnished to the person concerned.



(5) Sub-sections (1) to (4) shall not apply in relation to a balance sheet of a private company laid before it before the commencement of this Act and the right of any person to have sent to him or to be furnished with a copy of any such balance sheet, and the liability of the company in respect of a failure to satisfy that right, shall be the same as they would have been if this Act had not been passed.

**205. Three copies of balance sheet etc. to be filed with Registrar.**—(1) After the balance sheet and the profit and loss account have been laid before a company at the annual general meeting as aforesaid, there shall be filed with the Registrar at the same time as the copy of the annual return referred to in section 154—

(a) in the case of a public company, three copies of the balance sheet and the profit and loss account, signed by the managing director, managing agent, manager or secretary of the company, or if there be none of these, by a director of the company, together with three copies of all documents which are required by this Act to be annexed or attached to such balance sheet or profit and loss account ;

(b) in the case of a private company, three copies of the balance sheet certified to be true copies by the company's auditors together with the auditors' report in so far as it relates to the balance sheet.

(2) If the annual general meeting of a public or private company before which a balance sheet is laid as aforesaid does not adopt the balance sheet, a statement of that fact and of the reasons therefor shall be annexed to the balance sheet and to the copies thereof required to be filed with the Registrar.

(3) If default is made in complying with the requirements of sub-sections (1) and (2), the company and, every officer of the company who is in default, shall be liable to the like punishment as is provided by section 155 for a default in complying with the provisions of sections 152, 153 and 154.

**206. Duty of officer to make disclosure of payments etc.**—(1) Where any particulars or information is required to be given in the balance sheet or profit and loss account of a company or in any document required to be annexed or attached thereto, it shall be the duty of the concerned officer of the company to furnish without delay to the company, and also to an auditor whenever he so requires, those particulars or that information in as full a manner as possible.

(2) Where the officer concerned is the managing agent and such agent is a firm or body corporate, the duty aforesaid shall extend to every partner in the firm and to every director of the body corporate.

(3) The particulars or information referred to in sub-section (1) may relate to payments made to any director, managing agent, or other person by any other company, body corporate, firm or person.

(4) If any person knowingly makes default in performing the duty cast on him by the foregoing provisions of this section, he shall be punishable with imprisonment which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

**207. Construction of references to documents annexed to accounts.**—References in this Act to documents annexed or required to be annexed to a company's accounts or any of them shall not include the directors' report or the auditors' report or any document attached or required to be attached to these accounts :

Provided that any information which is required by this Act to be given in the accounts, and is allowed by it to be given in a statement annexed to the accounts, may be given in the directors' report instead of in the accounts and if any such information is so given, the report shall be annexed to the accounts and this Act shall apply in relation thereto accordingly, except that the auditors shall report thereon only in so far as it gives the said information.

**208. Certain companies to publish statement in form E in Schedule X.**—(1) Every company being an insurance company or a deposit, provident or benefit society, shall, before it commences business and also on the first Monday in February and the first Monday in August in every year during which it carries on business, make a statement in Form E in Schedule X, or as near thereto as circumstances admit.

(2) A copy of the statement, together with a copy of the last audited balance sheet laid before the members of the company shall be displayed and until the display of the next following statement, shall be kept displayed, in a conspicuous place in the registered office of the company, and in every branch office or place where the business of the company is carried on.

(3) Every member and every creditor of the company shall be entitled to a copy of the statement, on payment of a sum of eight annas.

(4) If default is made in complying with any of the requirements of this section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty rupees for every day during which the default continues.

(5) This section shall not apply to a life assurance company or provident insurance society to which the provisions of the Insurance Act, 1938 (IV of 1938), as to the annual statements to be made by such company or society, apply with or without modifications, if the company or society complies with those provisions.

#### *Audit*

**209. Qualifications and appointment and powers and duties of auditors.**—(1) Every company shall at each annual general meeting appoint an auditor or auditors to hold office from the conclusion of that meeting until the conclusion of the next annual general meeting.

(2) At any annual general meeting a retiring auditor, by whatsoever authority appointed, shall be re-appointed, unless—

- (a) he is not qualified for re-appointment ; or
- (b) a resolution has been passed at that meeting appointing somebody instead of him or providing expressly that he shall not be re-appointed ; or
- (c) he has given the company notice in writing of his unwillingness to be re-appointed :

Provided that where notice is given of an intended resolution to appoint some person or persons in the place of a retiring auditor, and by reason of the death,

incapacity or disqualification of that person or of all those persons, as the case may be, the resolution cannot be proceeded with, the retiring auditor shall not be automatically re-appointed by virtue of this sub-section.

(3) Where at an annual general meeting no auditors are appointed or re-appointed, the Central Government may appoint a person to fill the vacancy.

(4) The company shall, within one week of the Central Government's power under sub-section (3) becoming exercisable, give notice of that fact to that Government ; and, if a company fails to give such notice, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees.

(5) The first auditor or auditors of a company may be appointed by the directors at any time before the first annual general meeting, and the auditor or auditors so appointed shall hold office until the conclusion of that meeting :

Provided that—

(a) the company may, at a general meeting, remove any such auditor or all or any of such auditors and appoint in his or their places any other person or persons who have been nominated for appointment by any member of the company and of whose nomination notice has been given to the members of the company not less than fourteen days before the date of the meeting ; and

(b) if the directors fail to exercise their powers under this sub-section, the company in general meeting may appoint the first auditor or auditors.

(6) (a) The directors may fill any casual vacancy in the office of an auditor ; but while any such vacancy continues, the remaining auditor or auditors, if any, may act :

Provided that where such vacancy is caused by the resignation of an auditor, the vacancy shall only be filled by the company in general meeting.

(b) Any auditor appointed in a casual vacancy shall hold office until the conclusion of the next annual general meeting.

(7) Except as provided in the proviso to sub-section (5), any auditor appointed under this section may be removed from office before the expiry of his term only by the company in general meeting, after obtaining the previous approval of the Central Government in that behalf.

(8) The remuneration of the auditors of a company—

(a) in the case of an auditor appointed by the directors or by the Central Government, may be fixed by the directors or by the Central Government, as the case may be ;

(b) subject to clause (a), shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine.

For the purposes of this sub-section, any sums paid by the company in respect of the auditors' expenses shall be deemed to be included in the expression " remuneration ".

**210. Provisions as to resolutions for appointing or removing auditors.**—(1) Special notice shall be required for a resolution at a company's annual general meeting appointing as auditor a person other than a retiring auditor or providing expressly that a retiring auditor shall not be re-appointed.

(2) On receipt of notice of such a resolution, the company shall forthwith send a copy thereof to the retiring auditor, if any.

(3) Where notice is given of such a resolution and the retiring auditor makes with respect thereto representations in writing to the company (not exceeding a reasonable length) and requests their notification to members of the company, the company shall, unless the representations are received by it too late for it to do so,—

(a) in any notice of the resolution given to members of the company state the fact of the representations having been made ; and

(b) send a copy of the representations to every member of the company to whom notice of the meeting is sent (whether before or after the receipt of the representations by the company) ;

and if a copy of the representations is not sent as aforesaid because they were received too late or because of the company's default, the auditor may (without prejudice to his right to be heard orally) require that the representations shall be read out at the meeting :

Provided that copies of the representations need not be sent out and the representations need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the Court is satisfied that the rights conferred by this sub-section are being abused to secure needless publicity for defamatory matter ; and the Court may order the company's costs on an application under this section to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application.

(4) Sub-sections (2) and (3) shall apply to a resolution to remove the first auditors or any of them under sub-section (5) of section 209 or to the removal of any auditor or auditors under sub-section (7) of that section, as it applies in relation to a resolution that a retiring auditor shall not be re-appointed.

**211. Qualifications and disqualification of auditors.**—(1) A person shall not be qualified for appointment as auditor of a company unless either—

(a) he is a chartered accountant within the meaning of the Chartered Accountants Act, 1949 (XXX VIII of 1949), or

(b) he is for the time being authorised by the Central Government to be so appointed either as having obtained similar qualifications outside India or as having obtained adequate knowledge and experience in the course of his employment by a chartered accountant as aforesaid :

Provided that a firm whereof all the partners practising in India are qualified for appointment as aforesaid may be appointed by its firm name to be auditor of a company, in which case any partner so practising may act in the name of the firm.

(2) None of the following persons shall be qualified for appointment as auditor of a company—

(a) an officer or servant of the company ;

- (b) a person who is a partner, or who is in the employment, of an officer or servant of the company ;
- (c) a person who is indebted to the company for an amount exceeding one thousand rupees or who has given any guarantee or provided any security in connection with the indebtedness of any third person to the company for an amount exceeding one thousand rupees ;
- (d) a person who is a director or member of a private company, or a partner of a firm, which is the managing agent of the company ;
- (e) a person who is a director, or the holder of shares exceeding five per cent in nominal value of the subscribed capital, of any body corporate which is the managing agent of the company :

Provided that any shares held by such person as nominee or trustee for any third person and in which the holder has no beneficial interest shall be excluded in computing the percentage of shares held by him for the purpose of this clause.

(3) A person shall also not be qualified for appointment as auditor of a company if he is, by virtue of sub-section (2), disqualified for appointment as auditor of any other body corporate which is that company's subsidiary or holding company, or a subsidiary of that company's holding company or would be so disqualified if the body corporate were a company.

(4) If an auditor becomes subject after his appointment to any of the disqualification specified in sub-sections (2) and (3), he shall be deemed to have vacated his office as such.

**212. Powers and duties of auditors.**—(1) Every auditor of a company shall have a right of access at all times to the books and accounts and vouchers of the company, whether kept at the head office of the company or elsewhere, and shall be entitled to require from the officers of the company such information and explanations as the auditor may think necessary for the performance of his duties as auditor.

(2) The auditor shall make a report to the members of the company on the accounts examined by him, and on every balance sheet and profit and loss account and on every other document declared by this Act to be part of or annexed to the balance sheet or profit and loss account, which are laid before the company in general meeting during his tenure of office, and the report shall state whether, in his opinion and to the best of his information and according to the explanations given to him, the said accounts give the information required by this Act in the manner so required and give a true and fair view—

- (i) in the case of the balance sheet, of the state of the company's affairs as at the end of its financial year ; and
  - (ii) in the case of the profit and loss account, of the profit or loss for its financial year.
- (3) The auditor's report shall also state—
- (a) whether he has obtained all the information and explanations which to the best of his knowledge and belief were necessary for the purposes of his audit ;

- (b) whether, in his opinion, proper books of account have been kept by the company so far as appears from his examination of those books, and proper returns adequate for the purposes of his audit have been received from branches not visited by him ;
- (c) whether the company's balance sheet and profit and loss account dealt with by the report are in agreement with the books of account and returns.

(4) Where the company is one which is not required to disclose any matters by virtue of any provisions contained in this or in any other Act, if the balance sheet and the profit and loss account specify those provisions and if, in the opinion of the auditor and to the best of his information and according to the explanations given to him, they give the information required by this Act in the manner so required and subject to the provisions aforesaid, give a true and fair view, in the case of the balance sheet of the state of the company's affairs as at the end of its financial year, and in the case of the profit and loss account, of the profit or loss for its financial year, the auditor's report shall state that in his opinion and to the best of his information and according to the explanations given to him, the accounts of the company are properly drawn up so as to disclose the state of the company's affairs as at the date of its balance sheet and its profit or loss for its financial year ending on that date, so far as is required by the provisions of this or any other Act applicable to the company.

**213. Audit of accounts of branch office of company.**—(1) Where a company has a branch office, the accounts of that office shall, unless the company in general meeting decides otherwise, be audited by a person qualified for appointment as auditor of the company under section 210, or where the branch office is situate in a country outside India, either by a person qualified as aforesaid or by an accountant duly qualified to act as an auditor of the accounts of the branch office in accordance with the laws of that country.

(2) Where the accounts of any branch office are not so audited, the company's auditor—

- (a) shall be entitled to visit the branch office, if he deems it necessary to do so for the performance of his duties as auditor ; and
- (b) shall have a right of access at all times to the books and accounts and vouchers of the company maintained at the branch office, notwithstanding anything contained in sub-section (2) of section 194:

Provided that in the case of a banking company having a branch office outside India, it shall be sufficient if the auditor is allowed access to such copies of, and extracts from, the books and accounts of the branch as have been transmitted to the principal office of the company in India.

**214. Signature of audit report etc.**—Only the person appointed as auditor of the company, or where a firm is so appointed in pursuance of the proviso to sub-section (1) of section 211, only a partner of the firm practising in India, may sign the auditor's report or sign or authenticate any financial statement of the company.

**215. Reading and inspection of auditor's report.**—The auditor's report shall be read before the company in general meeting and shall be open to inspection by any member of the company.

**216. Right of auditor to receive notices of and attend general meeting.**—All notices of and other communications relating to any general meeting of a company which any member of the company is entitled to have sent to him shall be forwarded to the auditor of the company; and the auditor shall be entitled to attend any general meeting and to be heard at any general meeting which he attends on any part of the business which concerns him as auditor.

**217. Penalty for non-compliance by company with sections 212 to 216.**—If default is made by a company in complying with any of the provisions contained in sections 211 to 216, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees.

**218. Penalty for non-compliance by auditor with sections 212 and 214.**—If any auditor's report is made, or any financial statement of the company is signed or authenticated, otherwise than in conformity with the requirements of sections 212 and 214, the auditor concerned and the person, if any, other than the auditor who signs the report or signs or authenticates the financial statement aforesaid shall, if the default is wilful, be punishable with fine which may extend to one thousand rupees.

*Power of Registrar to call for information etc.*

**219. Power of Registrar to call for information or explanation.**—

(1) Where, on perusing any document which a company is required to submit to him under this Act, the Registrar is of opinion that any information or explanation is necessary in order that such document may afford full particulars of the matter to which it purports to relate, he may, by a written order, call on the company submitting the document to furnish in writing such information or explanation, within such time as he may specify in the order.

(2) On receipt by the company of an order under sub-section (1), it shall be the duty of the company, and of all persons who are officers of the company, to furnish such information or explanation to the best of their power.

(3) On receipt of a copy of an order under sub-section (1), it shall also be the duty of every person who has been an officer of the company to furnish such information or explanation to the best of his power.

(4) If the company or any such person as is referred to in sub-section (2) or (3) refuses or neglects to furnish any such information or explanation,—

(a) the company, and each such person, shall be punishable with fine which may extend to fifty rupees in respect of each offence, and

(b) the Court may, on the application of the Registrar and after notice to the company, make an order on the company for production of such documents as, in the opinion of the Court, may reasonably be required by the Registrar for the purpose referred to in sub-section (1) and allow the Registrar inspection thereof on such terms and conditions as it thinks fit.

(5) On receipt of any document containing such information or explanation, the Registrar may annex it to the original document submitted to him; and any document so annexed shall be subject to the like provisions as to inspection, the taking of extracts, and the furnishing of copies, as the original document is subject.

(6) If such information or explanation is not furnished within the specified time, or if after perusal of such information or explanation the Registrar is of opinion that the document in question discloses an unsatisfactory state of affairs, or that it does not disclose a full and fair statement of the matter to which it purports to relate, the Registrar shall report in writing the circumstances of the case to the Central Government.

(7) If it is represented to the Registrar in materials placed before him by any contributory or creditor that the business of a company is being carried on in fraud of its creditors or the creditors of any other person or otherwise for a fraudulent or unlawful purpose, he may, after giving the company an opportunity of being heard, by a written order, call on the company to furnish in writing any information or explanation on matters specified in the order, within such time as he may specify therein ; and the provisions of sub-sections (2), (3), (4) and (6) of this section shall apply to such order.

If upon inquiry the Registrar is satisfied that any representation on which he took action under this sub-section was frivolous or vexatious, he shall disclose the identity of his informant to the company.

(8) The provisions of this section shall apply *mutatis mutandis* to documents which a liquidator is required to file under this Act.

#### *Investigation*

**220. Investigation of affairs of company on application by members or report by Registrar.**—The Central Government may appoint one or more inspectors to investigate the affairs of any company and to report thereon in such manner as the Central Government may direct—

- (a) in the case of a company having a share capital, on the application either of not less than two hundred members or of members holding not less than one-tenth of the shares issued ;
- (b) in the case of a company not having a share capital, on the application of not less than one-fifth in number of the persons on the company's register of members ;
- (c) in the case of any company, on a report by the Registrar under sub-section, (6), or sub-section (7) read with sub-section (6), of section 219.

**221. Application for inspection by members to be supported by evidence.**—An application by members of a company under clause (a) or clause (b) of section 220 shall be supported by such evidence as the Central Government may require for the purpose of showing that the applicants have good reason for requiring the investigation ; and the Central Government may, before appointing an inspector, require the applicants to give security for payment of the costs of the investigation.

**222. Investigation of company's affairs in other cases.**—Without prejudice to its powers under section 220, the Central Government—

- (a) shall appoint one or more inspectors to investigate the affairs of a company and to report thereon in such manner as the Central Government may direct, if—

- (i) the company by special resolution ; or
- (ii) the Court by order ;

declares that the affairs of the company ought to be investigated by an inspector appointed by the Central Government ; and



(b) may do so if, in the opinion of the Central Government, there are circumstances suggesting—

- (i) that the business of the company is being conducted with intent to defraud its creditors or the creditors of any other person or otherwise for a fraudulent or unlawful purpose, or in a manner oppressive of any of its members, or that the company was formed for any fraudulent or unlawful purpose ; or
- (ii) that persons concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards the company or towards any of its members ; or
- (iii) that the members of the company have not been given all the information with respect to its affairs which they might reasonably expect.

**223. Power of inspectors to carry investigation into affairs of related companies or of managing agent or associate.**—If an inspector appointed under section 220 or 222 to investigate the affairs of a company thinks it necessary for the purposes of his investigation to investigate also the affairs of—

- (a) any other body corporate which is or has at any relevant time been the company's subsidiary or holding company or a subsidiary of its holding company or a holding company of its subsidiary;
- (b) any other body corporate which is, or has at any relevant time been, managed—
  - (i) by the same managing agent as the company ; or
  - (ii) by any person who is, or was at the relevant time, an associate of the managing agent of the company ; or
  - (iii) by any person of whom the managing agent of the company is, or was at the relevant time, an associate;
- (c) any other body corporate which is, or has at any relevant time been, managed by the company ; or
- (d) any person who is, or has at any relevant time been, the company's managing agent or an associate of such managing agent,

The inspector shall have power so to do, and shall report on the affairs of the other body corporate or of the managing agent or associate of the managing agent, so far as he thinks the results of his investigation thereof are relevant to the investigation of the affairs of the first-mentioned company.

**224. Production of documents and evidence on investigation.**—

- (1) It shall be the duty of all officers and agents of the company, and where the company is or was managed by a managing agent, of all officers and agents of the managing agent, and where the affairs of any other body corporate or of a managing agent or of an associate of a managing agent are investigated by

virtue of section 223, of all officers and agents of such body corporate, managing agent, or associate, and where such managing agent or associate is or was a firm, of all partners in the firm—

- (a) to produce to an inspector all books and papers of, or relating to, the company or as the case may be, of or relating to the other body corporate, managing agent or associate, which are in their custody or power ; and
- (b) otherwise to give to the inspector all assistance in connection with the investigation which they are reasonably able to give.

(2) An inspector may examine on oath any of the persons referred to in sub-section (1), in relation to the affairs of the company, other body corporate, managing agent or associate, as the case may be.

(3) If any such person refuses—

- (a) to produce to an inspector any book or paper which it is his duty under sub-section (1) to produce, or
- (b) to answer any question which is put to him by an inspector in pursuance of sub-section (2),

the inspector may certify the refusal under his hand to the Court ; and the Court may thereupon inquire into the case, and if after hearing any witnesses who may be produced against or on behalf of such person and after hearing also any statement which may be offered in his defence, the Court finds that the refusal was not justified, it may punish such person in like manner as if he had been guilty of contempt of the Court.

(4) If an inspector thinks it necessary for the purpose of his investigation that a person whom he has no power to examine on oath should be so examined, he may apply to the Court and the Court may, if it sees fit, order that person to attend and be examined on oath before it on any matter relevant to the investigation, and on any such examination—

- (a) the inspector may take part therein either personally or by a legal practitioner ;
- (b) the Court may put such questions to the person examined as the Court thinks fit ;
- (c) the person examined shall answer all such questions as the Court may put or allow to be put to him, but may at his own cost employ a legal practitioner, who shall be at liberty to put to such person such questions as the Court may deem just for the purpose of enabling him to explain or qualify any answers given by him ;

and notes of the examination shall be taken down in writing and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him :

Provided that, notwithstanding anything in clause (c), the Court may allow the person examined such costs as in its discretion it may think fit, and any costs so allowed shall be treated as part of the expenses of the investigation.

(5) In this section—

- (a) the expression “ agent ”, in relation to any company, body or person, means any one acting or purporting to act for or on behalf of such company, body or person, and includes the bankers and legal advisers of, and persons employed as auditors by, such company, body or person; and

- (b) any reference to officers or agents shall be construed as a reference to past as well as present officers or agents, as the case may be.

**225. Inspectors' report.**—(1) The inspectors may, and if so directed by the Central Government shall, make interim reports to that Government, and on the conclusion of the investigation, shall make a final report to the Central Government.

Any such report shall be written or printed as the Central Government may direct.

(2) The Central Government—

- (a) shall forward a copy of any report made by the inspectors to the company at its registered office, and also to any body corporate, managing agent or associate dealt with in the report by virtue of section 223;
- (b) may, if it thinks fit, furnish a copy thereof, on request and on payment of the prescribed fee, to any person—
- (i) who is a member of the company or other body corporate (including a managing agent or an associate of a managing agent, where such managing agent or associate is a body corporate) dealt with in the report by virtue of section 223, or
  - (ii) who is a partner in the firm, where such managing agent or associate is a firm, or
  - (iii) whose interests as a creditor of the company, other body corporate, managing agent or associate aforesaid appear to the Central Government to be affected;
- (c) where the inspectors are appointed under clause (a) or (b) of section 220, shall furnish, at the request of the applicants for the investigation, a copy of the report to them; and
- (d) where the inspectors are appointed under section 222 in pursuance of an order of the Court, shall furnish a copy of the report to the Court:

Provided that the Central Government shall not be bound to furnish the company or the body corporate, managing agent, associate, person or applicants aforesaid with a copy or a complete copy of the report if it is of opinion that there is good reason for not divulging the contents of the report or of any parts thereof.

- (3) The Central Government may also cause the report to be published.

**226. Prosecution on inspectors' report.**—(1) If from any report made under section 225 it appears to the Central Government that any person has, in relation to the company or in relation to any other body corporate or managing agent or associate of a managing agent whose affairs have been investigated by virtue of section 223, been guilty of any offence for which he is criminally liable, the Central Government may, after taking such legal advice as it think fit, prosecute such person for the offence; and it shall be the duty of all officers and agents of the company, body corporate, managing agent, or associate, as the case may be, (other than the accused in the proceedings) to give the Central Government all assistance in connection with the prosecution which they are reasonably able to give.

(2) Sub-section (5) of section 224 shall apply for the purposes of this section, as it applies for the purposes of that section.

**227. Application for winding up of company etc. on inspectors' report.**—If any such company or other body corporate, or any such managing agent or associate being a body corporate, is liable to be wound up under this Act and it appears to the Central Government from any such report as aforesaid that it is expedient so to do by reason of any such circumstances as are referred to in sub-clause (i) or (ii) of clause (b) of section 222, the Central Government may, unless the company, body corporate, managing agent or associate is already being wound up by the Court, cause to be presented to the Court by the Registrar,—

- (a) a petition for the winding up of the company, body corporate, managing agent or associate on the ground that it is just and equitable that it should be wound up ;
- (b) an application for an order under section 367 or 368;
- (c) both a petition and an application as aforesaid.

**228. Proceedings for recovery of damages or property on inspectors' report.**—(1) If from any such report as aforesaid, it appears to the Central Government that proceedings ought in the public interest to be brought by the company or any body corporate whose affairs have been investigated in pursuance of clause (a), (b) or (c) of section 223,

- (a) for the recovery of damages in respect of any fraud, misfeasance or other misconduct in connection with the promotion or formation, or the management of the affairs, of such company or body corporate ;
- (b) for the recovery of any property of such company, or body corporate, which has been misapplied or wrongfully retained ;

the Central Government may itself bring proceedings for that purpose in the name of such company or body corporate.

(2) The Central Government shall indemnify such company or body corporate against any costs or expenses incurred by it in or in connection with any proceedings brought by virtue of sub-section (1).

**229. Recovery of expenses of investigation etc.**—(1) The expenses of and incidental to an investigation by an inspector appointed by the Central Government under section 220 or 222 shall be defrayed in the first instance by the Central Government, but the following persons shall, to the extent mentioned below, be liable to reimburse the Central Government in respect of such expenses:—

- (a) any person who is convicted on a prosecution instituted in pursuance of section 226, or who is ordered to pay damages or restore any property in proceedings brought by virtue of section 228, may, in the same proceedings, be ordered to pay the said expenses to such extent as may be specified by the Court convicting such person or ordering him to pay such damages or restore such property, as the case may be ;
- (b) any company or body corporate in whose name proceedings are brought as aforesaid shall be liable, to the extent of the amount or value of any sums or property recovered by it as a result of the proceedings; and

(c) unless, as a result of the investigation, a prosecution is instituted in pursuance of section 226,—

(i) any company, body corporate, managing agent or associate dealt with by the report, where the inspector was appointed under clause (a) or clause (b) of section 220 or under clause (a) of section 222, shall be liable to reimburse the Central Government in respect of the whole of the expenses, unless and except in so far as the Central Government otherwise directs ; and

(ii) the applicants for the investigation, where the inspector was appointed under clause (a) or clause (b) of section 220, shall be liable to such extent, if any, as the Central Government may direct.

(2) Any amount for which a company or body corporate is liable by virtue of clause (b) of sub-section (1) shall be a first charge on the sums or property mentioned in that clause.

(3) The report of an inspector appointed under clause (c) of section 220 or clause (b) of section 222, may if he thinks fit, and shall if the Central Government so directs, include a recommendation as to the directions, if any, which he thinks appropriate, in the light of his investigation, to be given under clause (c) of sub-section (1).

(4) For the purposes of this section, any costs or expenses incurred by the Central Government in or in connection with proceedings brought by virtue of section 228 [including expenses incurred by virtue of sub-section (2) thereof] shall be treated as expenses of the investigation giving rise to the proceedings.

(5) (a) Any liability to reimburse the Central Government imposed by clauses (a) and (b) of sub-section (1) shall, subject to satisfaction of the right of the Central Government to reimbursement, be a liability also to indemnify all persons against liability under clause (c) of that sub-section.

(b) Any such liability imposed by the said clause (a) shall, subject as aforesaid, be a liability also to indemnify all persons against liability under the said clause (b).

(c) Any person liable under the said clause (a) or clause (b) or sub-clause (i) or sub-clause (ii) of the said clause (c) shall be entitled to contribution from any other persons liable under the same clause or sub-clause, as the case may be, according to the amount of their respective liabilities thereunder.

(6) The expenses to be defrayed by the Central Government under this section shall, so far as they are not recovered thereunder, be paid out of moneys provided by Parliament.

**230. Inspectors' report to be evidence.**—A copy of any report of any inspector or inspectors appointed under section 220 or 222 authenticated in such manner, if any, as may be prescribed, shall be admissible in any legal proceeding as evidence of the opinion of the inspector or inspectors in relation to any matter contained in the report.

**231. Appointment and powers of inspectors to investigate ownership of company.**—(1) Where it appears to the Central Government that there is good reason so to do, it may appoint one or more inspectors to investigate and report on the membership of any company and other matters relating to the company, for the purpose of determining the true persons—

- (a) who are or have been financially interested in the success or failure whether real or apparent, of the company, or
- (b) who are or have been able to control or materially to influence the policy of the company.

(2) When appointing an inspector under sub-section (1), the Central Government may define the scope of his investigation, whether as respects the matters or the period to which it is to extend or otherwise, and in particular may limit the investigation to matters connected with particular shares or debentures.

(3) Subject to the terms of an inspector's appointment, his powers shall extend to the investigation of any circumstances suggesting the existence of any arrangement or understanding which, though not legally binding, is or was observed or likely to be observed in practice and which is relevant to the purposes of his investigation.

(4) Subject as aforesaid, the powers of the inspector shall also extend, where the company has or had a managing agent—

- (a) in case such managing agent is or was a body corporate, to the investigation of the ownership of the shares of such body corporate, and of who the persons are or were who control or manage or controlled or managed its affairs ;
- (b) in case such managing agent is or was a firm, to the investigation of who the persons are or were who control or manage or controlled or managed its affairs as partners in the firm or otherwise and of the respective interests therein of the partners; and
- (c) in all cases, to the investigation of who the persons are who are entitled or who the persons were who were entitled to any share of, or any amount forming part of, the managing agent's remuneration.

(5) For the purposes of any investigation under this section, sections 223, 224 and 225 shall apply with the necessary modifications of references to the affairs of the company or to those of any other body corporate or of any managing agent or associate :

Provided that the said sections shall apply in relation to all persons (including persons concerned only on behalf of others) who are or have been, or whom the inspector has reasonable cause to believe to be or to have been—

- (i) financially interested in the success or failure, or the apparent success or failure, of the company, or of any other body corporate, managing agent or associate whose membership or constitution is investigated with that of the company, or
- (ii) able to control or materially to influence the policy of such company, body corporate, managing agent or associate, as they apply in relation to officers and agents of the company, of the other body corporate, or of the managing agent or associate, as the case may be.

(6) The expenses of any investigation under this section shall be defrayed by the Central Government out of moneys provided by Parliament, unless the Central Government directs that the expenses or any part thereof should be paid by the persons on whose application the investigation was ordered.

**232. Power to require information as to persons interested in shares or debentures or in interest in managing agency firm etc.—**

(1) Where it appears to the Central Government that there is good reason to investigate the ownership of any shares in or debentures of a company or of a body corporate which acts or has acted as the managing agent of a company and that it is unnecessary to appoint an inspector for the purpose, the Central Government may require any person whom it has reasonable cause to believe—

(a) to be, or to have been, interested in those shares or debentures ; or

(b) to act, or to have acted, in relation to those shares or debentures as the legal adviser or agent of someone interested therein ;

to give the Central Government any information which he has, or can reasonably be expected to obtain, as to the present and past interests in those shares or debentures and the names and addresses of the persons interested and of any persons who act or have acted on their behalf in relation to the shares or debentures.

(2) For the purposes of sub-section (1), a person shall be deemed to have an interest in a share or debenture—

(a) if he has any right to acquire or dispose of the share or debenture or any interest therein or to vote in respect thereof; or

(b) if his consent is necessary for the exercise of any of the rights of other persons interested therein ; or

(c) if other persons interested therein can be required, or are accustomed, to exercise their rights in accordance with his directions or instructions.

(3) Where it appears to the Central Government that there is good reason to investigate the ownership of any interest in a firm which acts or has acted as a managing agent of any company, and that it is unnecessary to appoint an inspector for the purpose, the Central Government may require any person whom it has reasonable cause to believe—

(a) to have, or to have had, any interest in the firm, or

(b) to act, or to have acted, in relation to any such interest, as the legal adviser or agent of someone interested therein,

to give the Central Government any information which he has, or can reasonably be expected to obtain, as to the present and past interests held in the firm, and the names and addresses of the persons interested and of any persons who act or have acted on their behalf in relation to any such interest.

(4) Any person—

(a) who fails to give any information required of him under this section, or

(b) who, in giving any such information, makes any statement which he knows to be false in a material particular or recklessly makes any statement which is false in a material particular,

shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

**233. Investigation regarding association with managing agent.—**

(1) Where any question arises as to whether any body corporate, firm, or individual is or is not, or was or was not, an associate of the managing agent of a company, and it appears to the Central Government that there is good reason to investigate such question, it may either—

- (a) appoint an inspector for the purpose of making the investigation; or
- (b) if it considers it unnecessary to appoint an inspector as aforesaid, require any person whom it has reasonable cause to believe to be in a position to give relevant information in regard to the question, to furnish the Central Government with information on such matters as may be specified by it.

(2) The provisions of section 231 shall apply *mutatis mutandis* to cases falling under clause (a) of sub-section (1) and those of section 232 to cases falling under clause (b) of that sub-section.

**234. Power to impose restrictions on shares or debentures.—**

(1) Where in connection with an investigation under section 231, 232 or 233, it appears to the Central Government that there is difficulty in finding out the relevant facts about any shares (whether issued or to be issued), and that the difficulty is due wholly or mainly to the unwillingness of the persons concerned or any of them to assist the investigation as required by this Act, the Central Government may, by order, direct that the shares shall, until further order, be subject to the restrictions imposed by this section.

(2) So long as any shares are directed to be subject to the restrictions imposed by this section—

- (a) any transfer of those shares shall be void ;
- (b) where those shares are to be issued, they shall not be issued; and any issue thereof or any transfer of the right to them shall be void ;
- (c) no voting rights shall be exercisable in respect of those shares ;
- (d) no further shares shall be issued in right of those shares or in pursuance of any offer made to the holder thereof ; and any issue of such shares, or any transfer of the right to them, shall be void ;
- (e) except in a liquidation, no payment shall be made of any sums due from the company on those shares, whether in respect of dividend, capital or otherwise.

(3) Where the Central Government makes an order directing that any shares shall be subject to the said restrictions, or refuses to make an order directing that any shares shall cease to be subject thereto, any person aggrieved thereby may apply to the Court, and the Court may, if it sees fit, direct that the shares shall cease to be subject to the said restrictions.

(4) Any order (whether of the Central Government or of the Court) directing that any shares shall cease to be subject to the said restrictions which is expressed to be made with a view to permitting a transfer of those shares may continue the restrictions mentioned in clauses (d) and (e) of sub-section (2), either in whole or in part, so far as they relate to any right acquired, or offer made, before the transfer.

(5) Any person who—

- (a) exercises, or purports to exercise, any right to dispose of any shares or of any right to be issued with any such shares, when to his knowledge, he is not entitled to do so, by reason of any of the said restrictions applicable to the case ; or



- (b) votes in respect of any such shares, whether as holder or proxy, or appoints a proxy to vote in respect thereof when, to his knowledge, he is not entitled to do so by reason of any of the said restrictions applicable to the case ; or
- (c) being the holder of any such shares, fails to give notice of the fact of their being subject to the said restrictions to any person whom he does not know to be aware of that fact but whom he knows to be entitled, apart from such restrictions, to vote in respect of those shares, whether as holder or proxy ;

shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

(6) Where shares in any company are issued in contravention of such of the said restrictions as may be applicable to the case, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five thousand rupees.

(7) A prosecution shall not be instituted under this section except by, or with the consent of, the Central Government.

(8) This section shall apply in relation to debentures as it applies in relation to shares.

**235. Saving for legal advisers and bankers.**—Nothing in sections 219 to 234 shall require the disclosure to the Registrar or to the Central Government or to an inspector appointed by that Government—

- (a) by a legal adviser, of any privileged communication made to him in that capacity, except as respects the name and address of his client ; or
- (b) by the bankers of any company, body corporate, managing agent, or other person, referred to in the sections aforesaid, as such bankers, of any information as to the affairs of any of their customers other than such company, body corporate, managing agent or person.

(ii) DIRECTORS ETC.

*Constitution of Board of Directors*

**236. Minimum number of directors.**—(1) Every public company, and every private company which is a subsidiary of a public company, shall have at least three directors.

(2) Every private company which is not a subsidiary of a public company shall have at least two directors.

(3) The directors of a company collectively are referred to in this Act as the " Board of Directors."

**237. Only individuals to be directors.**—No body corporate, association or firm shall be appointed director of a public or private company, and only an individual shall be so appointed.

**238. Subscribers of memorandum to exercise the powers of directors.**—In default of and subject to any regulations in the articles of a company, subscribers of the memorandum who are individuals, shall exercise the powers of the directors of the company, until the directors are duly appointed in pursuance of section 239.

**239. Appointment of directors and proportion of those who are to retire by rotation**—(1) Not less than two-thirds of the total number of directors of a public company or of a private company which is a subsidiary of a public company shall—

(a) be persons whose period of office is liable to determination by retirement of directors by rotation, and

(b) be appointed by the members of the company in general meeting.

(2) The remaining directors in the case of any such company, and the directors generally in the case of a private company which is not a subsidiary of a public company, shall, in default of and subject to any regulations in the articles of the company, also be appointed by the members of the company in general meeting.

**240. Provision regarding directors retiring by rotation.**—(1) At the first annual general meeting of a public company or a private company which is a subsidiary of a public company held next after the date of the general meeting at which the first directors are appointed in pursuance of section 239, and at every subsequent annual general meeting, one-third of such of the directors for the time being as are liable to retire by rotation or if their number is not three or a multiple of three, then, the number, nearest to one-third, shall retire from office.

(2) The directors to retire by rotation at every annual general meeting shall be those who have been longest in office since their last appointment, but as between persons who became directors on the same day, those who are to retire shall, in default of and subject to any agreement among themselves, be determined by lot.

(3) The company at the annual general meeting at which a director retires as aforesaid may fill up the vacated office by appointing the retiring director or some other person thereto.

(4) If the place of the retiring director is not so filled up, the meeting shall stand adjourned till the same day in the next week, at the same time and place; and, if at the adjourned meeting also, the place of the retiring director is not filled up, the retiring director shall be deemed to have been re-appointed at the adjourned meeting, unless, at such meeting or at the previous meeting, it is or was expressly resolved not to fill the vacated office, or a resolution for the re-appointment of such director shall have been put to the meeting and lost, or unless the retiring director has expressed in writing addressed to the company or the board of directors his unwillingness to be so re-appointed.

**241. Right of persons other than retiring directors to stand for directorship.**—(1) A person who is not a retiring director shall, subject to the provisions of this Act, be eligible for appointment to the office of director at any general meeting, if he or some other member intending to propose him has, not less than fourteen days before the meeting, left at the office of the company a notice in writing under his hand signifying his candidature for the office of director or the intention of such member to propose him as a candidate for that office.

(2) Sub-section (1) shall not apply to a private company, unless it is a subsidiary of a public company.

**242. Right of company to increase or reduce the number of directors.**—(1) Subject to the provisions of section 239, a company in general

meeting may, from time to time, by ordinary resolution increase or reduce the number of its directors.

(2) Nothing in this section or in section 239 shall affect any power conferred on the directors by the articles to appoint additional directors :

Provided that such additional directors shall hold office only up to the date of the next general meeting of the company :

Provided further that the number of the directors and additional directors together shall not exceed the maximum strength fixed for the directorate by the articles.

**243. Certain persons connected with managing agent not to be appointed directors, except by special resolution.**—(1) If a public company, or a private company which is a subsidiary of a public company, has a managing agent, none of the following persons shall be appointed as a director of the company whose period of office is liable to determination by retirement of directors by rotation, except by a special resolution passed by the company :—

- (a) any person who is an officer or employee of, or who holds any office or place of profit under, the company or any subsidiary thereof :

Provided that nothing in this clause shall apply to the director of such company or subsidiary, or to the holder of any office or place of profit under such company or subsidiary which may be held by a director of the company by virtue of section 290 ;

- (b) where any office or place of profit which would disqualify a person under clause (a) read with the proviso thereto is held by any firm, any partner in, or employee of, the firm ;
- (c) where any such office or place of profit is held by a private company any member, officer or employee of such company ;
- (d) where any such office or place of profit is held by a body corporate, any officer or employee of such body corporate ;
- (e) any person who is entitled, by virtue of any agreement to any share of, or any amount out of, the remuneration received by the managing agent ;
- (f) where the managing agent is an individual, any partner or employee of the managing agent ;
- (g) where the managing agent is a firm, any partner in, or employee of, the firm ;
- (h) where the managing agent is a private company, any member, officer or employee thereof ;
- (i) where the managing agent is a body corporate, any officer or employee thereof ;
- (j) any person who is an officer or employee of, or who holds any office or place of profit under, any body corporate under the management of the managing agent or any subsidiary of such body corporate :

Provided that nothing in clause (j) shall apply to the director of such body corporate or subsidiary or to the holder of any office or place of profit under such body corporate or subsidiary which may be held by a director of such body corporate by virtue of section 290.

(2) Special notice shall be required of any resolution appointing, or approving the appointment of, any person referred to in clauses (a) to (j) of sub-section (1), as a director of the company.

(3) The notice given to the company of any such resolution, and the notice thereof given by the company to its members, shall set out the reasons which make the resolution necessary.

**244. Filling of certain casual vacancies among directors.—**

(1) In the case of a public company or a private company which is a subsidiary of a public company, if the office of any director appointed by the general meeting of the company is vacated before his term of office will expire in the normal course, the resulting casual vacancy may be filled by the directors at a directors' meeting.

(2) Any person so appointed shall hold office only up to—

(a) the date of the next ordinary general meeting of the company, that is to say, a general meeting not being a meeting which is held on a requisition under section 160, or

(b) the date up to which the director in whose place he is appointed would have held office if it had not been vacated as aforesaid, whichever date is earlier.

(3) Where the date referred to in clause (a) of sub-section (2) occurs earlier than the date referred to in clause (b) of that sub-section, the general meeting shall appoint a director to fill the vacancy; and he shall hold office up to the latter date.

*Explanation.*—The vacancy referred to in this sub-section shall not be taken into account in determining the number of directors, if any, to be appointed by the meeting to replace those who retire by rotation.

(4) Where the date referred to in clause (b) of sub-section (2) occurs earlier than, or coincides with, the date referred to in clause (a) of that sub-section, the vacancy shall be filled by the general meeting as if the director previously appointed by the general meeting had vacated office in the normal course.

*Explanation.*—The vacancy referred to in this sub-section shall be taken into account in determining the number of directors to be appointed by the meeting to replace those who retire by rotation.

(5) The person appointed under sub-section (1) at the directors' meeting shall be eligible for appointment as director under sub-section (3) or sub-section (4), as the case may be.

(6) If any casual vacancy such as is referred to in sub-section (1) has not been filled at a directors' meeting before the date of the general meeting referred to in clause (a) of sub-section (2), the general meeting shall have power to appoint a director in the vacancy under sub-section (4) or sub-section (3), according as the term of the director who vacated office will or will not have expired, in the normal course, before the date of the meeting.

(7) Where any director appointed under any of the provisions of this section other than sub-section (4) vacates office before the date on which he is due to vacate it under the provisions of this section, the resulting vacancy shall be deemed to be a casual vacancy within the meaning and for the purposes of this section.

**245. Appointment of directors to be voted on individually.—(1)**

At a general meeting of a public company or of a private company which is a subsidiary of a public company, a motion shall not be made for the appointment of two or more persons as directors of the company by a single resolution, unless a resolution that it shall be so made has first been agreed to by the meeting without any vote being given against it.

(2) A resolution moved in contravention of sub-section (1) shall be void, whether or not objection was taken at the time to its being so moved :

Provided that where a resolution so moved is passed, no provision for the automatic re-appointment of retiring directors in default of another appointment shall apply.

(3) For the purposes of this section, a motion for approving a person's appointment or for nominating a person for appointment shall be treated as a motion for his appointment.

(4) Nothing in this section shall apply to a resolution altering the articles of the company.

**246. Consent of candidate for directorship to be filed with Registrar.—(1)** A person who is not a retiring director shall not be capable of being appointed director of a company unless he has, by himself or by his agent authorised in writing, signed and filed with the Registrar, a consent in writing to act as such director.

(2) Sub-section (1) shall not apply to a private company unless it is a subsidiary of a public company.

**247. Restrictions on appointment or advertisement of director.—**

(1) A person shall not be capable of being appointed director of a company by the articles, and shall not be named as a director or proposed director of a company in a prospectus issued by or on behalf of the company, or as proposed director of an intended company in a prospectus issued in relation to that intended company, or in a statement in lieu of prospectus filed with the Registrar by or on behalf of a company, unless, before the registration of the articles, the publication of the prospectus, or the filing of the statement in lieu of prospectus, as the case may be, he has, by himself or by his agent authorised in writing,—

(a) signed and filed with the Registrar a consent in writing to act as such director ; and

(b) save in the case of companies not having a share capital, and save also, as otherwise provided in sections 248 to 251, either—

(i) signed the memorandum for a number of shares not being less than that of his qualification shares, if any ; or

(ii) taken his qualification shares, if any, from the company and paid or agreed to pay for them ; or

(iii) signed and filed with the Registrar an undertaking in writing to take from the company his qualification shares, if any, and pay for them ; or

(iv) made and filed with the Registrar an affidavit to the effect that a number of shares, not being less than that of his qualification shares, if any, are registered in his name.

(2) Where a person has signed and filed as aforesaid an undertaking to take and pay for his qualification shares, he shall, as regards those shares, be in the same position as if he had signed the memorandum for that number of shares.

(3) References in this section to the share qualification of a director or proposed director shall be construed as including only a share qualification required within a period determined by reference to the time of appointment, and references therein to qualification shares shall be construed accordingly.

(4) On the application for registration of the memorandum and the articles if any, of a company, the applicant shall file with the Registrar a list of the persons who have consented to be directors of the company; and, if this list contains the name of any person who has not so consented, the applicant shall be punishable with fine which may extend to five hundred rupees.

(5) This section shall not apply to—

- (a) a private company ; or
- (b) a company which was a private company before becoming a public company ; or
- (c) a prospectus issued by or on behalf of a company after the expiration of one year from the date on which the company was entitled to commence business.

#### *Share Qualification*

**248. Time within which share qualification is to be obtained and maximum amount thereof.**—(1) Without prejudice to the restrictions imposed by section 247, it shall be the duty of every director who is required by the articles of the company to hold a specified share qualification and who is not already qualified in that respect, to obtain his qualification within two months after his appointment as director.

(2) Any provision in the articles of the company (whether made before or after the commencement of this Act) shall be void in so far as it requires a person to hold the qualification shares before his appointment as a director or to obtain them within a shorter time than two months after his appointment as such.

(3) The nominal value of the qualification shares shall not exceed five thousand rupees or the nominal value of one share, where it exceeds five thousand rupees .

(4) For the purpose of any provision in the articles requiring a director to hold a specified share qualification, the bearer of a share warrant shall not be deemed to be the holder of the shares specified in the warrant.

**249. Filing of declaration of share qualification by director.**—Every director, not being a technical director or a director appointed by the Central or a State Government, shall within two months after his appointment, or in the case of a director holding office at the commencement of this Act, within two months after such commencement, file with the company a declaration specifying the qualification shares held by him.

**250. Penalty.**—If, after the expiration of the said period of two months, any person acts as a director of the company when he does not hold the qualification shares referred to in section 248, he shall be punishable with fine which may extend to fifty rupees for every day between such expiration and the last day on which he acted as a director.

**251. Saving.**—Sections 248 to 250 shall not apply to a private company, unless it is a subsidiary of a public company.

*Disqualifications of Directors*

**252. Disqualifications of directors.**—(1) A person shall not be capable of being appointed director of a company, if—

- (a) he has been found to be of unsound mind by a Court of competent jurisdiction and the finding is in force ; or
- (b) he is an undischarged insolvent ; or
- (c) he has been convicted by a Court in India of any non-bailable offence and a period of five years has not elapsed from the date of the conviction, or if any sentence of transportation or imprisonment has been imposed on him in respect of the offence, from the date of expiry of such sentence ; or
- (d) he has been convicted by a Court in India of any other offence and sentenced in respect thereof, to transportation or to imprisonment for not less than two years and a period of five years has not elapsed from the date of expiry of the sentence ; or
- (e) he or, any firm in which he is a partner or, any private company of which he is a director, has not paid any call in respect of shares of the company held by him, the firm or the private company, as the case may be, six months having elapsed from the last day fixed for the payment of the call.

(2) The Central Government may, by notification in the Official Gazette, remove the disqualification incurred by any person in virtue of clause (c), (d), or (e) of sub-section (1), either generally or in relation to any company or companies specified in the notification.

(3) In this section, “ non-bailable offence ” means any offence shown a non-bailable in the Second Schedule to the Code of Criminal Procedure 1898 (V of 1898) or which is made non-bailable by any other law for the time being in force.

(4) A private company which is not a subsidiary of a public company may, by its articles, provide that a person shall be disqualified for appointment as a director on any grounds in addition to those specified in sub-section (1)

*Number of directorships which may be held by one person*

**253. No person to be a director of more than twenty companies.**—After the commencement of this Act, no person shall, save as otherwise provided in section 254, hold office at the same time as director in more than twenty companies

**254. Choice to be made by director of more than twenty companies at commencement of Act.**—(1) Any person holding office as director in more than twenty companies immediately before the commencement of this Act shall, within one month from such commencement,—

- (a) choose not more than twenty of those companies, in which he wishes to continue to hold the office of director ;
- (b) resign his office as director in the other companies ; and
- (c) intimate the choice made by him under clause (a) to each of the companies in which he was holding the office of director before such commencement, to the Registrar having jurisdiction in respect of each such company, and also to the Central Government.

(2) Any resignation made in pursuance of clause (b) of sub-section (1) shall become effective immediately on the despatch thereof to the company concerned.

(3) No such person shall act as director—

- (a) in more than twenty companies, after the expiry of one month from the commencement of this Act, or
- (b) of any company after despatching the resignation of his office as director thereof, in pursuance of clause (b) of sub-section (1).

**255. Choice by person becoming director of more than twenty companies after commencement of Act.**—(1) Where a person already holding the office of director in twenty companies is appointed, after the commencement of this Act, as a director of any other company, the appointment—

- (a) shall not take effect unless such person has, within seven days thereof, effectively vacated his office as director in any of the companies in which he was already a director, and
- (b) shall become void immediately on the expiry of the seven days if he has not, before such expiry, effectively vacated his office as director in any of the other companies aforesaid.

(2) Where a person already holding the office of director in nineteen companies or less is appointed, after the commencement of this Act, as a director of other companies, making the total number of his directorships more than twenty, he shall choose the directorships which he wishes to continue to hold or to accept, so however that the total number of the directorships, old and new, held by him shall not exceed twenty.

None of the new appointments of director shall take effect until such choice is made and all the new appointments shall become void if the choice is not made within seven days of the day on which the last of them was made.

**256. Exclusion of certain directorships for the purposes of sections 253, 254 and 255.**—In calculating for the purposes of sections 253, 254 and 255, the number of companies of which a person may be a director, the following companies shall be excluded, namely :—

- (a) a private company which is not a subsidiary of a public company ;
- (b) an unlimited company ;
- (c) an association not carrying on business for profit ;



- (d) a company in which such person is only an alternate director, that is to say, a director who is only qualified to act as such during the absence or incapacity of some other director.

**257. Penalty.**—Any person who holds office, or acts, as a director of more than twenty companies in contravention of the foregoing provisions shall be punishable with fine which may extend to five thousand rupees in respect of each of those companies after the first twenty.

### *Retiring age of Directors*

**258. Age limit and vacation of office on reaching age limit.**—

(1) Save as otherwise provided in section 259, a person shall not be capable of being appointed a director of a public company or of a private company which is a subsidiary of a public company, if he has attained the age of sixty-five years.

(2) Save as aforesaid, a director of a public company or of a private company which is a subsidiary of a public company shall vacate his office at the conclusion of the annual general meeting commencing next after he attains the age of sixty-five years:

Provided that this sub-section shall not apply to a director who is in office at the commencement of this Act so as to require the termination of the appointment then held by him before the conclusion of the third annual general meeting held after the commencement of this Act, but shall apply so as to terminate the appointment aforesaid at the conclusion of that meeting, if he had completed the age of sixty-five years before the commencement of the meeting.

(3) Where a person retires by virtue of sub-section (2), no provision for the automatic re-appointment of retiring directors in default of another appointment shall apply and if at the meeting at the conclusion of which he retires, the vacancy is not filled, it may be filled as a casual vacancy, under section 244.

**259. Age limit not to apply if company so resolves.**—(1) Nothing in section 258 shall prevent the appointment of a director who has attained the age of sixty-five years or require a director to retire who has attained that age, if his appointment is or was made or approved by a resolution passed by the company in general meeting and specifically declaring that the age limit shall not apply to him.

(2) Special notice shall be required of any such resolution ; and unless such notice is given, the resolution shall be void.

(3) Notice of any such resolution given to the company, and by the company to its members, must state the age of the person to whom it relates.

**260. Duty of director to disclose age.**—(1) Any person who is appointed, or to his knowledge is proposed to be appointed, director of a company at a time when he has attained the age of sixty-five years or such lower age, if any, as may be specified in the company's articles in this behalf shall give notice of his age to the company :

Provided that this sub-section shall not apply in relation to a person's re-appointment on the termination of his previous appointment as director of the company, if notice has been given as aforesaid in connection with, or at any time during the continuance of, such previous appointment.

(2) Any person who—

- (a) fails to give notice of his age as required by sub-section (1), or
- (b) acts as director under any appointment which is invalid or has terminated by reason of his age,

shall be punishable with fine which may extend to fifty rupees for every day during which the failure continues or during which he continues to act as aforesaid, as the case may be.

(3) For the purposes of sub-section (2), a person who has acted as director under an appointment which is invalid or has terminated, shall be deemed to have continued so to act throughout the period from the date of the invalid appointment or the date on which the appointment terminated, as the case may be, until the last day on which he acted thereunder.

#### *Vacation of Office by Directors.*

**261. Vacation of office by directors—**(1) The office of a director shall be vacated if—

(a) he fails to obtain within the time specified in sub-section (1) of section 248, or at any time thereafter ceases to hold, the share qualification, if any, required of him under the articles of the company, or

(b) he is found to be of unsound mind by a Court of competent jurisdiction, or

(c) he is adjudged an insolvent, or

(d) he is convicted by a Court in India of any non-bailable offence as defined in sub-section (3) of section 252, or

(e) he is convicted by a Court in India of any other offence and is sentenced in respect thereof to transportation or to imprisonment for not less than two years, or

(f) he, or any firm in which he is a partner, or any private company of which he is a director, fails to pay any call in respect of shares of the company held by him, the firm or the private company, as the case may be, within six months from the last date fixed for the payment of the call, or

(g) he, or any firm in which he is a partner, or any private company of which he is a director, without the sanction of the company in general meeting, accepts or holds any office or place of profit under the company, other than that of a managing director or manager or a legal or technical adviser or a banker, or

(h) he absents himself from three consecutive meetings of the directors or from all meetings of the directors for a continuous period of three months, whichever is longer, without leave of absence from the board of directors, or

(i) he, or any firm in which he is a partner, or any private company of which he is a director, accepts a loan, or any guarantee or security for a loan, from the company in contravention of section 273, or

(j) he acts in contravention of section 277, or

(k) he is removed by an ordinary resolution passed by the company in general meeting in pursuance of section 262.

(2) Notwithstanding anything in clauses (c), (d) and (e) of sub-section (1), the disqualification referred to in those clauses shall not take effect until thirty days have elapsed from the date of such disqualification, or if within those thirty days an appeal or revision petition is filed in respect of the adjudication, conviction or sentence, until that appeal or revision petition is disposed of.

(3) A private company which is not a subsidiary of a public company may, by its articles, provide, that the office of director shall be vacated on any grounds in addition to those specified in sub-section (1).

**262. Removal of directors.**—(1) A company may, by ordinary resolution, remove a director before the expiration of his period of office :

Provided that this sub-section shall not, in the case of a private company authorise the removal of a director holding office for life on the 1st day of April 1952, whether or not subject to retirement under an age limit by virtue of the articles or otherwise.

(2) Special notice shall be required of any resolution to remove a director under this section or to appoint somebody instead of a director so removed at the meeting at which he is removed.

(3) On receipt of notice of a resolution to remove a director under this section, the company shall forthwith send a copy thereof to the director concerned, and the director (whether or not he is a member of the company) shall be entitled to be heard on the resolution at the meeting.

(4) Where notice is given of a resolution to remove a director under this section and the director concerned makes with respect thereto representations in writing to the company (not exceeding a reasonable length) and requests their notification to members of the company, the company shall, unless the representations are received by it too late for it to do so,—

(a) in any notice of the resolution given to members of the company, state the fact of the representations having been made ; and

(b) send a copy of the representations to every member of the company to whom notice of the meeting is sent (whether before or after receipt of the representations by the company) ;

and if a copy of the representations is not sent as aforesaid because they were received too late or because of the company's default, the director may (without prejudice to his right to be heard orally) require that the representations shall be read out at the meeting :

Provided that copies of the representations need not be sent out and the representations need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the Court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter ; and the Court may order the company's costs or an application under this section to be paid in whole or in part by the director, notwithstanding that he is not a party to the application.

(5) A vacancy created by the removal of a director under this section may, if he had been appointed by the company in general meeting or by the directors in pursuance of section 244, be filled by the appointment of another director in his stead by the meeting at which he is removed, provided special notice of the intended appointment was given under sub-section (2).

A director so appointed shall hold office until the date up to which his predecessor would have held office if he had not been removed as aforesaid.

(6) If the vacancy is not filled under sub-section (5), it may be filled as a casual vacancy in accordance with the provisions, so far as they may be applicable, of section 244, and all the provisions of that section shall apply accordingly :

Provided that the director who was removed from office shall not be re-appointed as a director by the board of directors.

(7) Nothing in this section shall be taken as depriving a person removed thereunder of any compensation or damages payable to him in respect of the termination of his appointment as director or of any appointment terminating with that as director or as derogating from any power to remove a director which may exist apart from this section.

(8) This section shall not apply to directors appointed before the 15th day of January 1937.

#### *Directors' meetings*

#### **263. Directors' meetings to be held once in every two months.—**

In the case of every company, a meeting of its directors shall be held at least once in every two calendar months, that is to say, if a directors' meeting is held in any calendar month, the next meeting shall be held not later than the last day of the calendar month immediately succeeding the next calendar month.

**264. Notice of directors' meetings.—**(1) Notice of every meeting of the directors of a company shall be given in writing to every director for the time being in India.

(2) Every officer of the company whose duty it is to give notice as aforesaid and who fails to do so shall be punishable with fine which may extend to one hundred rupees.

(3) Any accidental failure or omission to give notice as aforesaid to any director shall not invalidate the proceedings at the meeting.

**265. Quorum for directors' meetings.—**The quorum for a directors' meeting shall be—

(a) one-third of the total number of the directors, as determined under section 239 or 242, as the case may be, including therein the number of the directors, if any, whose places may be vacant at the time, or

(b) two directors,

whichever is higher.

#### **266. Procedure where meeting adjourned for want of quorum.—**

(1) The provisions of section 263 shall not be deemed to have been contravened merely by reason of the fact that a directors' meeting which had been duly called in compliance with the terms of that section could not be held for want of a quorum.

(2) In such a case, unless the articles otherwise provide, the meeting shall automatically stand adjourned to the same day and time in the following week, or if that day is a public holiday, to the same time on the next succeeding day which is not a public holiday.

**267. Procedure where anything required to be done at directors' meeting.**—Where anything is specifically directed or required to be done at a directors' meeting, whether by this Act or by the articles or by any special resolution passed by the company in general meeting, such thing shall be done only by means of a resolution passed at a meeting of the directors; and it shall not be sufficient to secure the approval of the directors to the resolution after circulating it to them in draft, together with the necessary papers, if any.

**268. Passing of resolutions by circulation.**—No resolution shall be deemed to have been duly passed by the directors or by a committee of directors by circulation, unless the resolution has been circulated in draft, together with the necessary papers, if any, to all the directors, or to all the members of the committee, then in India, and has been approved by such of them, or by a majority of such of them, as are entitled to vote on the resolution.

**269. Validity of acts of directors.**—Acts done by a person as a director shall be valid notwithstanding that it may afterwards be discovered that his appointment was invalid by reason of any defect or disqualification or had terminated by virtue of any provision contained in this Act or in the articles :

Provided that nothing in this section shall be deemed to give validity to acts done by a director after his appointment has been shown to the company to be invalid or to have terminated.

*Directors' Powers and Restrictions thereon*

**270. General powers of directors.**—(1) Subject to the provision contained in section 272 and where the company has a managing agent subject also to the provisions contained in Schedule VII, the directors of a company shall be entitled to exercise all such powers, and to do all such acts and things, as the company is authorised to exercise and do :

Provided that the directors shall not exercise any power or do any act or thing which is directed or required, whether by this or any other Act or by the memorandum or articles of the company or otherwise, to be exercised or done by the company in general meeting :

Provided further that in exercising any such power or doing any such act or thing, the directors shall be subject to the provisions contained in that behalf, in this or any other Act, or in the memorandum or articles of the company, or in any regulations not inconsistent therewith and duly made thereunder, including regulations made by the company in general meeting.

(2) No regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

**271. Certain powers to be exercised by directors only.**—(1) Only the directors of a company shall exercise the following powers on behalf of the company, and they shall do so only by means of resolution passed at a directors' meeting :—

- (a) the power to issue debentures ;
- (b) the power to make calls on shareholders in respect of money unpaid on their shares ;

- (c) the power to borrow moneys;
- (d) the power to invest the funds of the company;
- (e) the power to make loans;
- (f) any power which is not or would not be exercisable, by virtue of the provisions contained in this Act (including Schedule VII), by the managing agent of the company, if the company has a managing agent or if a managing agent were appointed thereto :

Provided that the directors may, by a resolution passed at a directors' meeting, delegate to any committee of directors, the managing director, the managing agent or the manager of the company the powers referred to in clauses (c), (d) and (e), to the extent specified in sub-sections (2), (3), and (4) respectively.

(2) Every resolution delegating the power referred to in clause (c) of sub-section (1) shall specify the total amount up to which moneys may be borrowed by the delegate.

(3) Every resolution delegating the power referred to in clause (d) of sub-section (1) shall specify the total amount up to which the funds may be invested, and the nature of the investments which may be made, by the delegate.

(4) Every resolution delegating the power referred to in clause (e) of sub-section (1) shall specify the total amount up to which loans may be made by the delegate, the purposes for which the loans may be so made, and the maximum amount of loan which may be made for each such purpose in individual cases.

(5) Every directors' resolution required by sub-sections (1) to (4) shall be passed only at a directors' meeting.

(6) Nothing in this section shall be deemed to affect the right of the company in general meeting to impose restrictions and conditions on the exercise by the directors of any of the powers referred to in sub-section (1).

**272. Restrictions on powers of directors.**—(1) The directors of a public company or of a subsidiary of a public company shall not, except with the consent of such public company or subsidiary in general meeting,—

- (a) sell, lease or otherwise dispose of the whole, or substantially the whole, of the undertaking of the company, or where the company owns more than one undertaking, of the whole, or substantially the whole, of any such undertaking, or
- (b) remit, or give time for the re-payment of, any debt due by a director, or
- (c) invest otherwise than in trust securities the sale proceeds resulting from the acquisition, after the commencement of this Act, by any Government or by any local or other authority, without the consent of the company, of any such undertaking as is referred to in clause (a), or of any premises or properties used for any such undertaking and without which it cannot be carried on or can be carried on only with difficulty or only after a considerable time, in pursuance of any power conferred on such Government or authority by any law for the time being in force, or
- (d) borrow moneys after the commencement of this Act, where the moneys to be so borrowed together with the moneys already borrowed by the company, will exceed the aggregate of the subscribed capital of the company and its free reserves, or

- (e) contribute or agree to contribute, after the commencement of this Act, to charitable and other funds any amounts the aggregate of which exceeds or will, when taken with contributions made or agreed to be made before the commencement of this Act, exceed in any financial year five thousand rupees or two percent of its average net profits during the three financial years immediately preceding, whichever is greater.
- (2) Nothing contained in clause (a) of sub-section (1) shall affect—
- (a) the title of a buyer or other person who buys or takes a lease of any such undertaking as is referred to in that clause, in good faith and after exercising due care and caution; or
- (b) the selling or leasing of any property of the company where the ordinary business of the company consists of, or comprises, such selling or leasing.

(3) Any resolution passed by the company permitting any transaction such as is referred to in clause (a) of sub-section (1) may attach such conditions to the permission as may be specified in the resolution, including conditions regarding the use, disposal or investment of the sale proceeds which may result from the transaction :

Provided that this sub-section shall not be deemed to authorise the company to effect any reduction in its capital except in accordance with the provisions contained in that behalf in this Act.

(4) (a) No lender or other person dealing with the company shall under an obligation to see or inquire whether the limit imposed by clause (d) of sub section (1) on borrowings by directors is observed.

(b) No debt incurred or security given in excess of the limit aforesaid shall be invalid or ineffectual, unless express notice has been given to the lender or the recipient of the security at the time when the debt was incurred or the security was given that the limit hereby imposed had been or was thereby exceeded.

**273. Loans to directors.**—(1) Save as otherwise provided in sub-section (2), no company (hereinafter in this section referred to as “the lending company”) shall, without obtaining the previous approval of the Central Government in that behalf, make any loan to, or give any guarantee or provide any security in connection with a loan made by any other person to,—

- (a) any director of the lending company or of a company which is its holding company; or
- (b) any firm in which any such director is a partner ; or
- (c) any private company of which any such director is a director or member ; or
- (d) any body corporate at a general meeting of which not less than twenty-five percent of the total voting power may be exercised or controlled by any director, or by two or more directors together, of the lending company; or
- (e) any public company in respect of which the Central Government, by order, declares that it is satisfied that the directors, managing director, managing agent or manager thereof is accustomed to act in accordance with the directions or instructions of any director or directors of the lending company, notwithstanding that the provisions of clause (d) may not be satisfied in relation to such public company.

(2) Sub-section (1) shall not apply to any loan made, guarantee given or security provided—

- (a) by a private company unless it is a subsidiary of a public company;  
or
- (b) by a banking company ; or
- (c) by a holding company to its subsidiary.

(3) Every person who is a party to any contravention of sub-section (1) including in particular any person to whom the loan is made or who has taken the loan in respect of which the guarantee is given or the security is provided, shall be punishable either with fine which may extend to five thousand rupees or with simple imprisonment for a term which may extend to six months :

Provided that where any loan in connection with which any such guarantee or security has been given or provided by the lending company has been repaid in full, no punishment by way of imprisonment, shall be imposed under this sub-section ; and where the loan has been repaid in part, the maximum punishment which may be imposed under this sub-section by way of imprisonment shall be proportionately reduced.

(4) All persons who are parties to any contravention of sub-section (1) shall be liable jointly and severally to the lending company for the repayment of the loan or for making good the sum which the lending company may have been called upon to pay in virtue of the guarantee given or the security provided by such company.

(5) No officer of the lending company shall be punishable under sub-section (3) or incur the liability referred to in sub-section (4) in respect of any loan made, guarantee given or security provided to any public company in contravention of clause (d) of sub-section (1), unless at the time when the loan was made, the guarantee was given or the security was provided by the lending company, he knew or had express notice that that clause was being contravened thereby.

**274. Saving regarding book-debts.**—Nothing contained in section 273 shall apply to a book-debt which is required to be treated by virtue of the provision contained in that behalf in Schedule VI as a loan or advance for the purpose of preparing the balance sheet of the company, unless the transaction represented by the book-debt was from its inception in the nature of a loan or an advance.

**275. Directors' sanction to be required for certain contracts in which particular directors are interested.**—(1) Except with the consent of the directors, a director of the company, a firm in which he is a partner, any other partner in such a firm, or a private company of which such a director is a member or director, shall not enter into any contract with the company—

- (a) for the sale, purchase or supply of any goods or materials ; or
- (b) after the commencement of this Act, for underwriting either the subscription of the shares of the company or the purchase of any of its debentures.

(2) Nothing contained in clause (a) of sub-section (1) shall affect—

- (a) any contract for the sale, purchase or supply of any goods or materials in which either the company, or the director, firm partner or private company, as the case may be, regularly trades, provided that the value of such goods and materials does not exceed one thousand rupees in the aggregate in any calendar year comprised in the period of the contract ; or



(b) any contract which was entered into before the 15th day of January, 1937.

(3) The consent of the directors required by sub-section (1) shall not be deemed to have been given within the meaning of that sub-section, unless the consent is accorded—

(a) by a resolution passed at a directors' meeting ; and

(b) before the contract is entered into or within two months of the date on which it was entered into.

(4) Where such consent is not accorded to the contract before it is entered into, anything done in pursuance of the contract shall, if such consent is ultimately not accorded, be voidable at the option of the directors.

(5) Sub-sections (3) and (4) shall not apply to any case where consent has been accorded to the contract before the commencement of this Act.

**276. Power of directors to carry on business when managing agent is deemed to have vacated office etc.**—Where in pursuance of any provisions contained in this Act the managing agent is deemed to have vacated or to have been suspended from office, or is removed or suspended from office, or ceases to act or to be entitled to act a managing agent, or where a permanent or temporary vacancy has otherwise occurred in the office of managing agent, then, notwithstanding anything contained in this Act, the directors of the company shall have power to carry on, or arrange for the carrying on of, the affairs of the company until the managing agent again becomes entitled to act as such, or until the company in general meeting resolves otherwise, as the case may be.

*Procedure etc where Director interested*

**277. Disclosure of interest by director.**—(1) Every director of a company who is in any way, whether directly or indirectly, concerned or interested in a contract or arrangement, or proposed contract or arrangement, entered into or to be entered into, by or on behalf of the company, shall disclose the nature of his concern or interest at a meeting of the directors of the company.

(2) (a) In the case of a proposed contract or arrangement, the disclosure required to be made by a director under sub-section (1) shall be made at the meeting of the directors at which the question of entering into the contract or arrangement is first taken into consideration, or if the director was not, at the date of that meeting, concerned or interested in the proposed contract or arrangement, at the next meeting of the directors held after he becomes so concerned or interested.

(b) Where the director becomes concerned or interested in a contract or arrangement after it is made, the said disclosure shall be made at the first meeting of the directors held after the director becomes so concerned or interested.

(3) (a) For the purposes of sub-sections (1) and (2), a general notice given to the directors of a company by a director, to the effect that he is a director or a member of a specified body corporate or is a member of a specified firm and is to be regarded as concerned or interested in any contract or arrangement which may, after the date of the notice, be entered into

with that body corporate or firm, shall be deemed to be a sufficient disclosure of concern or interest in relation to any contract or arrangement so made.

(b) Any such general notice shall expire at the end of the financial year in which it is given, but may be renewed for further periods of one financial year at a time, by a fresh notice given in the last month of the financial year in which it would otherwise have expired.

(c) No such general notice, and no renewal thereof, shall be of effect unless either it is given at a meeting of the directors, or the director concerned takes reasonable steps to secure that it is brought up and read at the next meeting of the directors after it is given.

(4) Every director who fails to comply with any of the foregoing provisions of this section shall be punishable with fine which may extend to five thousand rupees.

(5) Nothing in this section shall be taken to prejudice the operation of any rule of law prohibiting a director of a company from having any concern or interest in any contracts or arrangements with the company.

**278. Prohibition of participation by interested director.—(1)**

No director of a company shall, as a director, take any part in the discussion of, or vote on, any contract or arrangement entered into, or to be entered into, by or on behalf of the company, if he is in any way, whether directly or indirectly, concerned or interested in the contract or arrangement; nor shall his presence count for the purpose of forming a quorum at the time of any such discussion or vote; and if he does vote, his vote shall be void.

(2) Sub-section (1) shall not apply to—

- (a) a private company which is not a subsidiary of a public company; or
- (b) a private company which is a subsidiary of a public company, in respect of any contract or arrangement entered into, or to be entered into, by the private company with any holding company thereof; or
- (c) any contract of indemnity against any loss which the directors or any one or more of them may suffer by reason of becoming or being sureties or surety for the company; or
- (d) any contract or arrangement entered into or to be entered into with a public company, or a private company which is a subsidiary of a public company, in which the interest of the director aforesaid consists solely in his being a director of such company and the holder of not more than such number of shares therein as is requisite to qualify him for appointment as a director thereof; or
- (e) a public company or a private company, which is a subsidiary of a public company, in respect of which a notification is issued under sub-section (3), to the extent specified in the notification.

(3) In the case of a public company, or a private company which is a subsidiary of a public company, if the Central Government is of opinion that having regard to the desirability of establishing or promoting any industry, business or trade, it would not be in the public interest to apply all or any of the prohibitions contained in sub-section (1) to the company, the Central Government may, by notification in the Official Gazette, direct tha

that sub-section shall not apply to such company or shall apply thereto subject to such exceptions, modifications and conditions as may be specified in the notification.

(3) Every director who contravenes the provisions of this section shall be punishable with fine which may extend to five thousand rupees.

**279. Register of contracts in which directors are interested.—(1)** A register shall be kept by the company in which shall be entered particulars of every contract or arrangement to which section 277 applies, including in every case the following particulars, namely :—

- (a) the date of such contract or arrangement ;
- (b) the names of the parties thereto ;
- (c) the principal terms and conditions thereof ;
- (d) the date on which it was placed before the directors' meeting ;
- (e) the names of the directors voting for or against the contract or arrangement and the names of those remaining neutral.

(2) Particulars of every contract or arrangement to which section 277 applies shall be entered in the register aforesaid within three days of the directors' meeting at which the contract or arrangement is approved ; and the register shall be placed before the next meeting of the directors and shall then be signed by all the directors present at that meeting.

(3) If default is made in complying with the provisions of sub-section (1) or (2), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees.

(4) The register aforesaid shall be kept at the registered office of the company, and shall be open to inspection at such office, and extracts may be taken therefrom and copies thereof may be required, by any member of the company to the same extent, in the same manner, and on payment of the same fee as in the case of the register of members of the company; and the provisions of section 156 shall apply accordingly.

**280. Disclosure to members of director's interest in contract appointing manager, managing director or managing agent.—(1)** Where a company—

- (a) enters into a contract for the appointment of a manager of the company, in which contract any director of the company is in any way, whether directly or indirectly, concerned or interested, or
- (b) varies any such contract already in existence and in which a director is concerned or interested as aforesaid,

the company shall, within twenty-one days from the date of entering into the contract or of the varying of the contract, as the case may be, send to every member of the company an abstract of the terms of the contract or variation, together with a memorandum clearly specifying the nature of the concern or interest of the director in such contract or variation.

(2) Where a company enters into a contract for the appointment of a managing director of the company, or varies any such contract which is already in existence, the company shall send an abstract of the terms of the contract or variation to every member of the company within the time

specified in subsection (1) ; and if any other director of the company is concerned or interested in the contract or variation, a memorandum clearly specifying the nature of the concern or interest of such other director in the contract or variation shall also be sent to every member of the company with the abstract aforesaid.

(3) Where a company proposes to enter into a contract for the appointment of a managing agent, in which contract any director of the company is concerned or interested as aforesaid, or proposes to vary any such contract already in existence in which a director is concerned or interested as aforesaid, the company shall send the abstract and memorandum referred to in sub-section (2) to every member of the company, in sufficient time before the general meeting of the company at which the proposal is to be considered.

(4) Where a company enters into a contract for the appointment of a managing agent in pursuance of section 276, for a temporary period for carrying on the affairs of the company, the company shall send to every member of the company, within twenty-one days of the making of the contract, an abstract of the terms thereof, and if any director of the company is concerned or interested as aforesaid in the contract, also a memorandum clearly specifying the nature of the concern or interest of the director in such contract.

(5) All contracts entered into by a company for the appointment of a manager, managing director or managing agent shall be kept at the registered office of the company, and shall be open to the inspection of any member of the company at such office; and extracts may be taken therefrom and copies thereof may be required by any such member, to the same extent, in the same manner and on payment of the same fee, as in the case of the register of members of the company; and the provisions of section 156 shall apply accordingly.

(6) If default is made in complying with the foregoing provisions of this section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to one thousand rupees.

*Register of Directors, etc.*

**281. Register of directors, managing directors, managing agents and managers.**—(1) Every company shall keep at its registered office a register of its directors, managing directors, managing agents, managers and secretaries containing with respect to each of them the following particulars, that is to say :—

- (a) in the case of an individual, his present name and surname in full; any former name or surname in full; his usual residential address; his nationality; and, if that nationality is not the nationality of origin, his nationality of origin; his business occupation, if any; if he holds the office of director, managing director, managing agent, manager or secretary in any other body corporate, the particulars of each such office held by him; and except in the case of a private company which is not a subsidiary of a public company, the date of his birth;
- (b) in the case of a body corporate, its corporate name and registered or principal office; and the full name, address, nationality, and nationality of origin, if different from that nationality, of each of

its directors ; and if it holds the office of managing agent, director, managing director, manager or secretary in any other body corporate, the particulars of each such office so held ;

- (c) in the case of a firm, the name of the firm, the full name, address, nationality, and nationality of origin, if different from that nationality, of each partner ; and the date on which each became a partner ; and if the firm holds the office of managing agent, director, managing director or manager secretary in any other body corporate, the particulars of each such office so held ;
- (d) if any director or directors have been nominated by a body corporate, its corporate name ; all the particulars referred to in clause (a) in respect of each director so nominated, and also all the particulars referred to in clause (b) in respect of the body corporate ;
- (e) if any director or directors have been nominated by a firm, the name of the firm, all the particulars referred to in clause (a) in respect of each director so nominated, and also all the particulars referred to in clause (c) in respect of the firm.

*Explanation.*—For the purposes of this sub-section—

- (1) any person (whether an individual, a body corporate, or a firm) in accordance with whose instructions, the directors of a company are accustomed to act shall be deemed to be a director of the company ;
- (2) in the case of a person usually known by a title different from his surname, the expression “surname” means that title ; and
- (3) references to a former name or surname do not include—
  - (i) in the case of a person usually known by an Indian title different from his surname, the name by which he was known previous to the adoption of, or succession to, the title ;
  - (ii) in the case of any person, a former name or surname, where that name or surname was changed or disused before the person bearing the name attained the age of eighteen years, or has been changed or disused for a period of not less than twenty years ; and
  - (iii) in the case of a married woman, the name or surname by which she was known previous to the marriage.

(2) The company shall, within the periods respectively mentioned in this sub-section, send to the Registrar a return in the prescribed form containing the particulars specified in the said register and a notification in the prescribed form of any change among its directors, managing directors, managing agents, managers or secretaries or in any of the particulars contained in the register, specifying the date of the change.

The period within which the said return is to be sent shall be a period of twenty-eight days from the appointment of the first directors of the company and the period within which the said notification of a change is to be sent shall be twenty-eight days from the happening thereof.

(3) If default is made in complying with sub-section (1) or (2), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty rupees.

**282. Inspection of the register.**—(1) The register to be kept under section 281 shall during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that not less than two hours in each day are allowed for inspection) be open to the inspection of any member of the company without charge and of any other person on payment of one rupee for each inspection.

(2) If any inspection required under sub-section (1) is refused, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty rupees.

(3) In the case of any such refusal, the Court may, by order, direct an immediate inspection of the register.

**283. Duty of directors etc., to make disclosure.**—Every director (including a person deemed to be a director by virtue of the *Explanation* to sub-section (1) of section 281), managing director, managing agent, manager or secretary of any company, who is appointed to the office of director, managing director, managing agent, manager or secretary of any other body corporate shall, within twenty days of his appointment, disclose to the company aforesaid the particulars relating to the office in the other body corporate which are required to be specified under sub-section (1) of section 281; and if he fails to do so, he shall be punishable with fine which may extend to five hundred rupees.

**284. Register to be kept by Registrar and inspection thereof.**—(1) The Registrar shall keep a separate register or registers in which there shall be entered the particulars received by him under sub-section (2) of section 281 in respect of companies, so however that all entries in respect of each such company shall be together.

(2) The register or registers aforesaid shall be open to inspection by any member of the public at any time during office hours, on payment of the prescribed fee.

**285. Register of directors' shareholdings, etc.**—(1) Every company shall keep a register showing, as respects each director of the company, the number, description and amount of any shares in or debentures of the company or any other body corporate, being the company's subsidiary or holding company, or a subsidiary of the company's holding company, which are held by or in trust for him or of which he has any right to become the holder (whether on payment or not):

Provided that the register need not include shares in any body corporate which is the wholly-owned subsidiary of another body corporate, and for this purpose, a body corporate shall be deemed to be the wholly-owned subsidiary of another if it has no members but that other and that other's wholly-owned subsidiaries and its or their nominees.

(2) Where any shares or debentures have to be recorded in the said register or to be omitted therefrom, in relation to any director, by reason of a transaction entered into after the commencement of this Act and while he is a director, the register shall also show the date of, and the price or other consideration for, the transaction:

Provided that where there is an interval between the agreement for any such transaction and the completion thereof, the date so shown shall be that of the agreement.

(3) The nature and extent of a director's interest or right in or over any shares or debentures recorded in relation to him in the said register shall, if he so requires, be indicated in the register.

(4) The company shall not, by virtue of anything done for the purposes of this section, be affected with notice of, or be put upon inquiry as to, the rights of any person in relation to any shares or debentures.

(5) The said register shall, subject to the provisions of this section, be kept at the registered office of the company, and shall be open to inspection during business hours (subject to such reasonable restrictions as the company may, by its articles or in general meeting, impose, so that not less than two hours in each day are allowed for inspection) as follows :—

- (a) during the period beginning fourteen days before the date of the company's annual general meeting and ending three days after the date of its conclusion, it shall be open to the inspection of any member or holder of debentures of the company ; and
- (b) during that or any other period, it shall be open to the inspection of any person acting on behalf of the Central Government or of the Registrar.

In computing the fourteen days and the three days mentioned in this sub-section, any day which is a Saturday, a Sunday or a bank holiday shall be disregarded.

(6) Without prejudice to the rights conferred by sub-section (5), the Central Government or the Registrar may, at any time, require a copy of the said register, or any part thereof.

(7) The said register shall also be produced at the commencement of the company's annual general meeting and shall remain open and accessible during the continuance of the meeting to any person having the right to attend the meeting.

(8) If default is made in complying with sub-section (7), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees.

(9) If default is made in complying with sub-section (1) or (2), or if any inspection required under this section is refused, or if any copy required thereunder is not sent within a reasonable time, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five thousand rupees and also with a further fine which may extend to twenty rupees for every day during which the default continues.

(10) In the case of any such refusal, the Court may, by order, compel an immediate inspection of the register.

(11) For the purposes of this section—

- (a) the following shall be deemed to be directors of the company, namely :—
  - (i) any person in accordance with whose directions or instructions the directors of a company are accustomed to act ;
  - (ii) the managing agent of the company ;
  - (iii) any partner of such managing agent ;

- (iv) any firm in which such managing agent is a partner ;
  - (v) any private company which is an associate of such managing agent ;
  - (vi) any public company of which such managing agent is a director, managing agent or manager;
- (b) a director of a company shall be deemed to hold, or to have an interest or a right in or over, any shares or debentures, if a body corporate other than the company holds them or has that interest or right in or over them, and either—
- (i) that body corporate or its directors are accustomed to act in accordance with his directions or instructions ; or
  - (ii) he is entitled to exercise or control the exercise of one-third or more of the total voting power exercisable at any general meeting of that body corporate.

**286. Duty of directors and persons deemed to be directors to make disclosure of shareholdings.**—(1) Every director of a company, and every person deemed to be a director of the company by virtue of sub-section (11) of section 285, shall give notice to the company of such matters relating to himself as may be necessary for the purposes of that section.

(2) Any such notice shall be given in writing, and if it is not given at a meeting of the directors, the person giving the notice shall take all reasonable steps to secure that it is brought up and read at the meeting of the directors next after it is given.

(3) Any person who fails to comply with sub-section (1) or (2) shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to five thousand rupees, or with both.

#### *Remuneration of Directors*

**287. Remuneration of directors.**—(1) The remuneration payable to the directors of a company, including the managing director, shall be determined, in accordance with the provisions of this section, either by the articles of the company, or by a resolution or if the articles so require, by a special resolution, passed by the company in general meeting.

(2) A director may receive remuneration either by way of a monthly payment, or by way of a fee for each meeting attended, or partly by the one way and partly by the other.

(3) In lieu of or in addition to the remuneration specified in sub-section (2), remuneration may be paid to a director who is either in the whole-time employment of the company or a managing director, at a specified percentage of the "net profits" of the company :

Provided that such percentage shall not exceed five for any such director or where there is more than one such director, for all of them together.

(4) In the case of a director who is not either in the whole-time employment of the company or a managing director and whose remuneration does not include anything by way of a monthly payment, the company may, by special resolution, authorise the payment, to such director, or where there is more than one such director to all of them together—



(a) if the company has a managing agent, of a commission not exceeding one per cent of the "net profits" of the company.

(b) if the company has no managing agent, of a commission not exceeding three per cent of the "net profits" of the company.

(5) Any payments made to directors in pursuance of the foregoing sub-sections, including payments by way of commission, shall be deemed to be part of the working expenses of the company for all purposes except that of calculating the "net profits" of the company referred to in sub-sections (3) and (4). The net profits aforesaid shall, in all other respects, be computed in the manner laid down in Sections 330, 331 and 332.

(6) No director of a company who is in receipt of any commission from the company and who is neither a director who is in the whole-time employment of the company nor a managing director shall be entitled to receive any commission from any subsidiary of such company.

(7) The special resolution referred to in sub-section (4) shall not remain in force for a period of more than five years; but may be renewed, from time to time, by special resolution for further periods of not more than five years at a time :

Provided that no renewal shall take place except in the last of the years in which the resolution to be renewed is in force.

(8) The provisions of this section shall come into force immediately on the commencement of this Act.

(9) The provisions of this section shall not apply to a private company unless it is a subsidiary of a public company.

*General Provisions applicable to Directors and certain others*

**288. Prohibition of assignment of office by director or manager.**—Any assignment of his office made after the commencement of this Act by any director or manager of a company shall be void.

**289. Appointment of alternate directors and their term of office.**—

(1) The directors of a company may, if so authorised by its articles or by a resolution passed in general meeting by the company, appoint an alternate director to act for a director (hereinafter in this section called "the original director") during his absence of not less than three months from the district in which meetings of the directors are ordinarily held ; and such an appointment shall not be deemed to be an assignment of the office of director within the meaning of 288.

(2) An alternate director appointed under sub-section (1) shall vacate office if and when the original director returns to the district in which meetings of the directors are ordinarily held.

(3) If the term of office of the original director is determined before he so returns to the district aforesaid, no provision for the automatic re-appointment of retiring directors in default of another appointment shall apply to the alternate director.

(4) For the purposes of this section—

(a) the presidency-town of Calcutta shall be deemed to be part of the 24-Parganas district,

(b) the presidency-town of Madras shall be deemed to be part of the Chingleput district, and

(c) the presidency-town of Bombay and the Bombay suburban and Thana Districts shall be deemed to be one district.

**290. Director etc. not to hold office or place of profit.**—(1) Except with the previous consent of the company accorded by a special resolution, no director of a company, no firm in which such a director is a partner, no partner of such a director, no private company of which such a director is a director or member, and no director, managing agent or manager of such a private company shall hold any office or place of profit, except that of a managing director or manager or a legal or technical adviser or banker—

(a) under the company, or

(b) under any subsidiary of the company, unless the remuneration received from such subsidiary in respect of such office or place is paid over to the company or its holding company:

Provided that this sub-section shall not apply to a director appointed before the 15th day of January 1937, in respect of any office or place of profit under the company held by him from before that date.

(2) Any office or place in a company, other than that of a managing agent or of a trustee for the holders of debentures in the company, shall be deemed to be an office or place of profit under the company within the meaning of sub-section (1), if the director holding it obtains anything by way of remuneration over and above the remuneration to which he is entitled as such director, whether by way of salary, fees, commission, perquisites, the right to occupy free of rent any premises as a place of residence, or otherwise.

*Restrictions on appointment of managing directors and managers etc.*

**291. Application of sections 292 to 296.**—Sections 292 to 296 shall not apply to a private company, unless it is a subsidiary of a public company.

**292. Number of companies of which one person may be appointed managing director or manager.**—(1) No company shall, after the commencement of this Act, appoint or employ as managing director or manager, any person who is either the managing director or the manager of any other company, except as provided in sub-section (2).

(2) A company may appoint or employ as its managing director or manager, a person who is the managing director or manager of one, and of not more than one, other company:

Provided that such appointment or employment is made or approved by a resolution passed at a directors' meeting with the consent of all the directors present at the meeting and of which meeting and of the resolution to be moved thereat special notice has been given to all the members then in India.

(3) Where, at the commencement of this Act, any person is holding the office either of managing director or of manager in more than two companies, he shall, within one month from the commencement of this Act, choose not more than two of those companies in which he wishes to continue to hold the office of managing director or manager, as the case may be; and the provisions of clauses (b) and (c) of sub-section (1) and of sub-sections (2) and

(3) of section 254 shall apply *mutatis mutandis* in relation to this case, as those provisions apply in relation to the case of director.

**293. Managing director, manager etc. not to be appointed for a term of more than five years at a time.**—(1) No company shall, after the commencement of this Act, appoint or employ, save as provided in sub-section (2),—

- (a) any individual as its managing director or manager ; or
- (b) any body corporate or firm to or in any office or place of profit under the company;

for a term exceeding five years at a time.

(2) Sub-section (1) shall not apply to the appointment or employment of a person as a technician or as a consultant, unless he is already—

- (i) a managing agent of the company, or
- (ii) where the managing agent is a firm, a partner in the firm, or
- (iii) where the managing agent is a private company, a director or member of such company, or
- (iv) where the managing agent is a public company, a director of such company.

(3) Any individual holding at the commencement of this Act the office of managing director or manager in a company, and any body corporate or firm holding at such commencement any office or place of profit under a company, shall, unless his or its term expires earlier, be deemed to have vacated his or its office immediately on the expiry of five years from the commencement of this Act.

(4) Nothing contained in sub-section (1) shall be deemed to prohibit the re-appointment, re-employment, or the extension of the term of office, of any person by further periods not exceeding five years on each occasion :

Provided that any such re-appointment, re-employment or extension shall be sanctioned only in the last two years of the existing term.

(5) The expressions “ office ” and “ place of profit ” shall have the same meaning in this section as they have in section 290.

**294. Firm or body corporate not to be appointed manager.**—No company shall, after the commencement of this Act, appoint or employ, or continue the appointment or employment of, any firm or body corporate as its manager.

**295. Certain persons not to be appointed managers.**—(1) No company shall, after the commencement of this Act, appoint or employ, or continue the appointment or employment of, any person as its manager who—

- (a) is, or has at any time been, adjudged an insolvent ; or
- (b) suspends, or has at any time suspended, payment to his creditors, or makes, or has at any time made, a composition with them; or
- (c) is, or has at any time been, convicted by a Court in India of an offence involving moral turpitude.

(2) The Central Government may, by notification in the Official Gazette, remove the disqualification incurred by any person in virtue of clause (a), (b), or (c) of sub-section (1), either generally or in relation to any company or companies specified in the notification.

**296. Calculation of commission etc., in certain cases.—(1)** Where any commission or other remuneration payable to the manager or any other officer or employee of a company is fixed at a percentage of, or is otherwise based on, the net profits of the company, such profits shall be calculated in the manner set out in sections 330, 331 and 332.

(2) Any provision in force at the commencement of this Act, providing for the payment of any commission or other remuneration in any manner based on the net profits of a company, shall continue to be in force for a period of two years from such commencement ; and thereafter shall become subject to the provisions of sub-section (1).

**297. Undischarged insolvent not to discharge functions of director etc., without Court's leave.—(1)** If any person being an undischarged insolvent, except with the leave of the Court by which he was adjudged insolvent,—

- (a) discharges any of the functions of a director, or acts as or discharges any of the functions of the managing agent or manager, of any company, or
- (b) directly or indirectly takes part or is concerned in the promotion, formation or management of any company,

he shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to five thousand rupees, or with both.

(2) The Court shall not give leave for the purposes of sub-section (1), unless notice of the intention to apply therefor has been served on the Official Assignee or Official Receiver concerned; and it shall be the duty of the Official Assignee or Official Receiver, if he is of opinion that it is contrary to the public interest that the leave should be given, to attend at the hearing of the application and oppose the grant of leave.

(3) In this section, “company” includes—

- (a) an unregistered company ; and
- (b) a body corporate incorporated outside India, which has an established place of business within India.

**298. Power to restrain fraudulent persons from managing companies.—(1)** Where—

- (a) a person is convicted of any offence in connection with the promotion, formation or management of a company ; or
- (b) in the course of winding up a company it appears that a person—
  - (i) has been guilty of any offence for which he is punishable (whether he has been convicted or not) under section 503, or
  - (ii) has otherwise been guilty, while an officer of the company, of any fraud or misfeasance in relation to the company or of any breach of his duty to the company ;

the Court may make an order that that person shall not, without the leave of the Court, be a director of, or in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of, a

company, for such period not exceeding five years as may be specified in the order.

(2) In sub-section (1), the expression "the Court",

(a) in relation to the making of an order against any person by virtue of clause (a) thereof, includes the Court by which he is convicted, as well as any Court having jurisdiction to wind up the company, as respects which the offence was committed; and

(b) in relation to the granting of leave, means any Court having jurisdiction to wind up the company as respects which leave is sought.

(3) A person intending to apply for the making of an order under this section by the Court having jurisdiction to wind up a company shall give not less than ten days' notice of his intention to the person against whom the order is sought, and at the hearing of the application, the last-mentioned person may appear and himself give evidence or call witnesses.

(4) An application for the making of an order under this section by the Court having jurisdiction to wind up a company may be made by the Official Liquidator, or by the liquidator of the company, or by any person who is or has been a member or creditor of the company.

(5) On the hearing of any application for an order under this section by the Official Liquidator or the liquidator, or of any application for leave under this section by a person against whom an order has been made on the application of the Official Liquidator or liquidator, the Official Liquidator or liquidator shall appear and call the attention of the Court to any matters which seem to him to be relevant, and may himself give evidence or call witnesses.

(6) An order may be made by virtue of sub-clause (ii) of clause (b) of sub-section (1), notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the order is to be made, and for the purposes of the said sub-clause (ii), the expression "officer" shall include any person in accordance with whose directions or instructions the directors of the company have been accustomed to act.

(7) If any person acts in contravention of an order made under this section, he shall, in respect of each offence, be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to five thousand rupees, or with both.

**299. Prohibition of tax-free payments.**—(1) No company shall pay to any officer or employee thereof, whether in his capacity as such or otherwise, remuneration free of any tax, or otherwise calculated by reference to, or varying with, any tax payable by him, or the rate or standard rate of any such tax, or the amount thereof.

*Explanation.*—In this sub-section, the expression "tax" comprises any kind of income-tax including super-tax.

(2) Where by virtue of any provision in force immediately before the commencement of this Act, whether contained in the company's articles or in any contract made with the company or in any resolution passed by the company in general meeting or by the company's directors, any officer or employee of the company holding any office at the commencement of this Act is entitled to remuneration in any of the modes prohibited by sub-section

(1), such provision shall have effect during the residence of the term for which he is entitled to hold such office at such commencement, as if it provided instead for the payment of a gross sum subject to the tax in question, which, after deducting such tax, would yield the net sum actually specified in such provision.

(3) This section shall not apply to any remuneration—

(a) which fell due before the commencement of this Act, or

(b) which may fall due after the commencement of this Act in respect of any period before such commencement.

**300. Compensation for loss of office not permissible except to managing directors and directors who are managers.**—(1) No company shall make to any director, not being a managing director or a director holding the office of manager or in the wholtime employment of the company, any payment by way of compensation for loss of office, or as consideration for or in connection with his retirement from office.

(2) Payment by way of compensation or as consideration, as aforesaid, may be made to a managing director or a director holding the office of manager or in the wholtime employment of the company in the same circumstances in which, and to the same extent to which, such payment may be made to a managing agent by virtue of sections 347 and 348.

(3) Nothing in this section shall be deemed to prohibit the payment to a managing director or a director holding the office of manager of any remuneration for services rendered by him to the company in any other capacity.

**301. Payment to director etc., for loss of office etc., in connection with transfer of undertaking or property.**—(1) No director of a company shall, in connection with the transfer of the whole or any part of any undertaking or property of the company, receive any payment, by way of compensation for loss of office or as consideration for or in connection with his retirement from office—

(a) from such company ; or

(b) from the transferee of such undertaking or property or from any other person (not being such company), unless particulars with respect to the payment proposed to be made by such transferee or person (including the amount thereof) have been disclosed to the members of the company and the proposal has been approved by the company in general meeting.

(2) Where a director of a company receives payment of any amount in contravention of sub-section (1), the amount shall be deemed to have been received by him in trust for the company.

(3) Sub-sections (1) and (2) shall not affect in any manner the operation of section 300.

**302. Payment to director for loss of office etc., in connection with transfer of shares.**—(1) No director of a company shall, in connection with the transfer to any persons of all or any of the shares in a company, being a transfer resulting from—

(i) an offer made to the general body of shareholders ;

- (ii) an offer made by or on behalf of some other body corporate with a view to the company becoming a subsidiary of such body corporate or a subsidiary of its holding company ;
- (iii) an offer made by or on behalf of an individual with a view to his obtaining the right to exercise, or control the exercise of, not less than one-third of the total voting power at any general meeting of the company ; or
- (iv) any other offer which is conditional on acceptance to a given extent ;

receive any payment by way of compensation for loss of office, or as consideration for or in connection with his retirement from office,—

(a) from such company ; or

(b) except as otherwise provided in this section, from the transferees of the shares or from any other person (not being such company).

(2) In the case referred to in clause (b) of sub-section (1), it shall be the duty of the director concerned to take all reasonable steps to secure that particulars with respect to the payment proposed to be made by the transferees or other person (including the amount thereof) are included in, or sent with, any notice of the offer made for their shares which is given to any shareholders.

(3) If—

(a) any such director fails to take reasonable steps as aforesaid ; or

(b) any person who has been properly required by any such director to include the said particulars in, or send them with, any such notice as aforesaid fails so to do ;

he shall be punishable with fine which may extend to two hundred and fifty rupees.

(4) If—

(a) the requirements of sub-section (2) are not complied with in relation to any such payment as is governed by clause (b) of sub-section (1) ; or

(b) the making of the proposed payment is not, before the transfer of any shares in pursuance of the offer, approved by a meeting, called for the purpose, of the holders of the shares to which the offer relates and other holders of shares of the same class as any of the said shares ;

any sum received by the director on account of the payment shall be deemed to have been received by him in trust for any persons who have sold their shares as a result of the offer made, and the expenses incurred by him in distributing that sum amongst those persons shall be borne by him and not retained out of that sum.

(5) Where the shareholders referred to in clause (b) of sub-section (4) are only a part of the members of the company and no provision is made by the articles for calling or regulating such a meeting as is mentioned in that clause, the provisions of this Act and of the company's articles relating to general meetings of the company shall, for that purpose, apply to the meeting either without modification or with such modifications as the Central Government may, on the application of any person concerned, direct, for the purpose of adapting them to the circumstances of the meeting.

(6) If at a meeting called for the purpose of approving any payment as required by clause (b) of sub-section (4), a quorum is not present and, after the meeting has been adjourned to a later date, a quorum is again not present, the payment shall, for the purposes of that sub-section, be deemed to have been approved.

**303. Provisions supplementary to sections 300, 301 and 302.**—(1) Where in proceedings for the recovery of any payment as having, by virtue of sub-section (2) of section 301 or sub-section (4) of section 302, been received by any person in trust, it is shown that—

- (a) the payment was made in pursuance of any arrangement entered into as part of the agreement for the transfer in question, or within one year before, or within two years after, that agreement or the offer leading thereto ; and
- (b) the company or any person to whom the transfer was made was privy to that arrangement ;

the payment shall be deemed, except in so far as the contrary is shown, to be one to which that sub-section applies.

(2) If in connection with any such transfer as is mentioned in section 301 or in section 302,—

- (a) the price to be paid to a director of the company whose office is to be abolished or who is to retire from office for any shares in the company held by him is in excess of the price which could at the time have been obtained by other holders of the like shares ; or
- (b) any valuable consideration is given to any such director ;

the excess or the money value of the consideration, as the case may be, shall for the purposes of that section, be deemed to have been a payment made to him by way of compensation for loss of office or as consideration for or in connection with his retirement from office.

(3) References in sections 300, 301 and 302 to payments made to any director of a company by way of compensation for loss of office, or as consideration for or in connection with his retirement from office, do not include any *bona fide* payment by way of damages for breach of contract or by way of pension in respect of past services ; and for the purposes of this sub-section the expression “pension” includes any superannuation allowance, superannuation gratuity or similar payment.

(4) Nothing in sections 301 and 302 shall be taken to prejudice the operation of any rule of law requiring disclosure to be made with respect to any such payments as are therein mentioned or with respect to any other like payments made or to be made to the directors of a company.

**304. Avoidance of provisions relieving liability of officers and auditors of company.**—(1) Save as provided in this section, any provision, whether contained in the articles of a company or in any agreement with a company or elsewhere, for exempting any officer of the company or any person employed by the company as auditor from, or indemnifying him against, any liability which, by virtue of any rule of law, would



otherwise attach to him in respect of any negligence, default, misfeasance, breach of duty or breach of trust of which he may be guilty in relation to the company shall be void :

Provided that—

- (a) nothing in this sub-section shall deprive any person of any exemption or right to be indemnified in respect of anything done or omitted to be done by him before the 15th day of July 1937 while any such provision was in force; and
- (b) a company may, in pursuance of any such provision as aforesaid, indemnify any such officer or auditor against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or discharged or in connection with any application under section 590 in which relief is granted to him by the Court.

(2) Nothing contained in clause (b) of the proviso to sub-section (1) shall apply to the constituted attorney of the managing agent of a company, unless such attorney is or is deemed to be an officer of the company.

**305. Directors etc., with unlimited liability in limited company.—**

(1) In a limited company, the liability of the directors or of any director or of the managing agent or manager may, if so provided by the memorandum, be unlimited.

(2) In a limited company in which the liability of a director, managing agent or manager is unlimited, the directors, the managing agent, and the manager of the company and the member who proposes a person for appointment to the office of director, managing agent or manager, shall add to that proposal a statement that the liability of the person holding that office will be unlimited; and before the person accepts the office or acts therein, notice in writing that his liability will be unlimited, shall be given to him by the following or one of the following persons, namely, the promoters of the company, its directors, its managing agent or manager, if any, and its officers.

(3) If any director, managing agent, manager or proposer makes default in adding such a statement or if any promoter, director, managing agent, manager or officer of the company makes default in giving such a notice, he shall be punishable with fine which may extend to one thousand rupees and shall also be liable for any damage which the person so appointed may sustain from the default, but the liability of the person appointed shall not be affected by the default.

**306. Special resolution of limited company making liability of directors etc., unlimited.**—(1) A limited company may, if so authorised by its articles, by special resolution, alter its memorandum so as to render unlimited the liability of its directors or of any director or of its managing agent or manager.

(2) Upon the passing of any such special resolution, the provisions thereof shall be as valid as if they had been originally contained in the memorandum :

Provided that no alteration of the memorandum making the liability of any of the officers referred to in sub-section (1) unlimited shall apply to such officer, if he was holding the office from before the date of the alteration, until the expiry of his then term, unless he has accorded his consent to his liability becoming unlimited.

## (iii) MANAGING AGENTS

*Prohibition of appointment of managing agent in certain cases*

**307. Private company acting as managing agent not to have managing agent.**—No private company acting as the managing agent of any other company, whether public or private, shall itself be managed by a managing agent, whether such private company transacts in addition any other kind of business or not.

*Appointment and term of office of managing agent*

**308. Application of sections 309 to 314.**—The provisions of sections 309 to 314 shall apply only to—

- (a) a public company, and
- (b) a private company which is a subsidiary of a public company.

**309. Term of office of managing agent.**—(1) After the commencement of this Act, no company shall—

- (a) in case it appoints a managing agent for the first time (that is to say, in case the company has had no managing agent at any time since its formation), make the appointment for a term exceeding fifteen years ;
- (b) in any other case, re-appoint or appoint a managing agent for a term exceeding ten years at a time ;
- (c) re-appoint a managing agent for a fresh term, when the existing term of the managing agent has two years or more to run:

Provided that the Central Government may, if satisfied that it is in the interest of the company so to do, permit the re-appointment of a managing agent at an earlier time than that specified in clause (c).

(2) For the purpose of sub-section (1), re-appointment does not include the re-appointment of any person on fresh, additional or changed conditions for any period not extending beyond his existing term, but otherwise includes—

- (a) the renewal, or the extension of the term, of a previous appointment, or
- (b) the appointment of any person or persons having an interest in the previous managing agency.

**310. Company in general meeting to appoint etc managing agent—**

(1) The power of appointing, re-appointing or renewing the appointment of, a managing agent, or of varying the terms of an agreement with the managing agent, shall be exercised by the company in general meeting.

(2) Subject to the provisions of this Act, the company shall be at liberty to appoint any person whom it considers suitable as its managing agent.

(3) A special resolution of the company shall be required for varying the terms of an agreement with the managing agent—

- (a) unless the variation or variations bring the terms of the agreement into full conformity with the provisions of this Act ; or
- (b) unless the variation or each of the variations, as the case may be, is to the manifest advantage of the company.

**311. Term of office of existing managing agents to terminate on 15th August 1959.**—(1) Where a company has a managing agent at the commencement of this Act, the term of office of such managing agent shall, if it does not expire earlier in accordance with the provisions applicable thereto immediately before such commencement, expire on the 15th day of August 1959, unless before that date he is re-appointed for a fresh term under sections 309 and 310 or section 314:

Provided that the termination of the managing agent's office under this sub-section shall not take effect until payment has been made or tendered to him of all moneys due to him in respect of (a) his remuneration (not including compensation for loss of office) up to the date of such termination, and (b) loans made by him to the company up to such date, not being either loans in respect of which debentures have been issued by the company or loans which are secured by a mortgage of, or charge on, any of the assets of the company.

(2) A managing agent whose office stands terminated under sub-section (1) shall be entitled—

- (a) to an indemnity in respect of all liabilities and obligations properly incurred by him on behalf of the company before such termination, and
- (b) in respect of such indemnity, to a charge on the assets of the company, subject to all existing charges and incumbrances, if any, on such assets.

**312. Application of Act to existing managing agents.**—(1) All other provisions of this Act except those relating to the remuneration payable to a managing agent, shall apply to every managing agent holding office at the commencement of this Act, with effect from such commencement.

(2) The provisions of this Act relating to the remuneration payable to a managing agent shall apply to every managing agent holding office at the commencement of this Act, with effect from the expiry of two years from such commencement.

**313. Election by existing managing agent of remuneration payable under Act.**—A managing agent may, by notice given to the company before the expiry of two years from the commencement of this Act, limit the remuneration payable to himself after the date of the notice, to the amount which will be payable to him under the provisions of this Act.

**314. Eligibility for re-appointment of managing agent on such election.**—Where notice is given as aforesaid within a period of one year from the commencement of this Act, the managing agent shall be eligible for re-appointment for a term not exceeding ten years commencing from the date of the notice.

*Vacation of office etc., by managing agent*

**315. Vacation of office by managing agent on insolvency, dissolution or winding up etc.**—Subject to the provisions of section 321, the managing agent of a company shall be deemed to have vacated his office as such—

- (a) in case the managing agent is an individual, if he is adjudged an insolvent ;

- (b) in case the managing agent is a firm, on its dissolution for any cause whatsoever, including the insolvency of a partner in the firm ;
- (c) in case the managing agent is a body corporate, on the commencement of its winding up whether by or subject to the supervision of the Court, or voluntarily ;
- (d) in all cases, on the commencement of the winding up of the company managed by the managing agent whether by or subject to the supervision of the Court or voluntarily.

**316. Suspension of managing agent from office where receiver appointed for his property.**—(1) The managing agent of a company shall be deemed to have been suspended from his office as such, if a receiver is appointed for his property—

- (a) by a Court, or
- (b) by or on behalf of the creditors of the managing agent, including the holders of debentures issued by the managing agent, in pursuance of any powers conferred by any instrument executed by the managing agent :

Provided that the Court which appointed the receiver or which will have jurisdiction to wind up the managed company, as the case may be, may, by order, direct that the managing agent shall continue to act as such for such period and subject to such restrictions and conditions, if any, as may be specified in the order.

(2) The Court may, at any time, cancel or vary any order passed by it under the proviso to sub-section (1).

**317. Vacation of office on conviction in certain cases.**—Subject to the provisions of sections 321 and 322, the managing agent of a company shall also be deemed to have vacated his office as such, if—

- (a) the managing agent, or
- (b) in case the managing agent is a firm, any partner in the firm, or
- (c) in case the managing agent is a body corporate, any director of, or any officer holding a general power of attorney from, such body corporate, is convicted by a Court in India—
  - (i) of any non-bailable offence as defined in sub-section (3) of section 252, or
  - (ii) of any other offence, and sentenced for such offence to transportation or to imprisonment for a "period" of not less than two years.

**318. Removal for fraud or breach of trust.**—A company in general meeting may, by ordinary resolution, remove its managing agent from office—

- (i) for fraud or breach of trust in relation to the affairs of the company or of any subsidiary thereof, whether committed before or after the commencement of this Act, or
- (ii) for fraud or breach of trust, whether committed before or after such commencement, in relation to the affairs of any other body corporate, while such managing agent was managing director, managing agent or manager of the body corporate, if a Court of Law, whether in or outside India, finds such fraud or breach of trust to have been duly established :

Provided that no managing agent shall be removed from office under this section for any fraud or breach of trust of which the company was aware when the managing agent was appointed or last re-appointed by the company.

**319. Removal for gross negligence or mismanagement.**—A company in general meeting may, by special resolution, remove its managing agent from office for gross negligence in, or for gross mismanagement of, the affairs of the company or of any subsidiary thereof.

**320. Power to call meetings for the purposes of sections 318 and 319 and procedure.**—(1) Without prejudice to any other provision contained in this Act or in the articles of the company for the calling of meetings, any two directors of the company may call a general meeting of the company for the purpose of considering any resolution of the nature referred to in section 318 or 319.

(2) On receipt of notice of any such resolution, a copy of the resolution shall be sent forthwith to the managing agent by the company.

(3) The managing agent shall have, in relation to any such resolution, all the rights which a director of the company has under section 262 in relation to any resolution for removing him from office, including, in particular, the right to make representations to the company in writing, to have such representations sent to members of the company and to have them read out at the meeting and also the right to be heard on the resolution at the meeting.

**321. Time when certain disqualifications will take effect.**—(1) The disqualifications imposed by clause (a) of section 315, by sub-section (1) of section 316, by section 317 and by any resolution passed in pursuance of clause (ii) of section 318 shall not take effect—

- (a) for thirty days from the date of the order of adjudication, of the appointment of the receiver, of the conviction, or of the finding of the Court of Law, as the case may be, or
- (b) where any appeal or petition is preferred within the thirty days aforesaid, against the order, appointment, conviction, or finding, or in cases falling under sub-clause (ii) of section 317, against the sentence, until the expiry of seven days from the date on which such appeal or petition is disposed of, or
- (c) where within the seven days aforesaid, any further appeal or petition is preferred in respect of the order, appointment, conviction, sentence or finding, as the case may be, and the appeal or petition, if allowed, would result in the removal of the disqualification, or in making the resolution inapplicable, as the case may be, until such further appeal or petition is disposed of.

(2) In the cases referred to in sub-section (1), the directors of the company may suspend the managing agent from office immediately on, or at any time after, the adjudication, appointment conviction, sentence or finding referred to in clause (a) of that sub-section and until the disposal of the appeals and petitions, if any, referred to in clauses (b) and (c) thereof, or until the convicted partner, director or officer is expelled or dismissed in pursuance of section 322, as the case may be.

**322. Conviction not to operate as disqualification if convicted partner, director etc., is expelled.**—(1) In the cases referred to in clauses (b) and (c) of section 317, it shall be open to the managing agent to expel or dis-

miss the convicted partner, director or officer, within thirty days from the date of his conviction ; and in that event, the disqualifications imposed by the clauses aforesaid shall cease to apply.

(2) Sub-section (1) shall not affect the operation of section 325, 326 or 327 in any case to which that section would otherwise apply.

**323. Resignation of office by managing agent.**—(1) Unless the managing agency agreement otherwise provides, a managing agent may, by notice to the directors of the company, resign his office with effect from such date as may be specified in the notice.

(2) The managing agent shall cease to act as such with effect from the date so specified or from such later date, if any, as may be mutually agreed on between him and the directors ; but his resignation shall not be effective until it is considered as provided in sub-section (3).

(3) When notice of resignation is given as aforesaid, the directors of the company shall—

- (a) prepare a statement of the affairs of the company as at the date specified in the notice of resignation or such subsequent date (not being later than that on which the managing agent ceases to act as such under sub-section (2)) as the directors may think suitable together with a balance sheet made out as at that date and a profit and loss account for the period subsequent to that for which the last such account was prepared and laid before the company in general meeting, and ending on that date ;
- (b) obtain a report from the auditors of the company on such balance sheet and profit and loss account, in accordance with sections 212, 213 and 214 ; and
- (c) place the managing agent's resignation together with the statement of affairs, balance sheet, profit and loss account and auditors' report mentioned above, before the company in general meeting .

(4) In relation to any report made by the auditors as aforesaid, sections 215, 216, 217 and 218 shall apply in like manner as they apply in relation to the auditors' report referred to therein.

(5) The company in general meeting may, by resolution, accept the resignation or take such other action with reference thereto as it may deem fit.

**324. Transfer of office by managing agent to be approved by special resolution.**—A transfer of his office by a managing agent shall not take effect unless it is approved by a special resolution passed by the company.

**325. Effect of changes in constitution of managing agency firm.**—In the case of a managing agency firm, where by a reason of any change in its constitution in conjunction with the changes which may have previously taken place, the aggregate of the collective shares or interest of (i) such of the partners as were members of the firm at the date when the managing agency agreement was executed ; and (ii) such of the partners as may have succeeded by inheritance to those who were partners at the date aforesaid falls below fifty-one per cent. of the total shares or interest held at the firm

time of the change by all the partners then constituting the firm, the firm shall—

- (a) cease to act as managing agent from the date on which the change aforesaid comes into operation, and
- (b) again become entitled to act as managing agent if, and only if, the change is approved by a special resolution passed by the company.

*Explanation.*—In this section, “inheritance” includes inheritance from the heir of a partner, or from the last of a chain of successive heirs starting with the heir of a partner.

**326. Effect of changes in constitution of managing agency corporation.**—In the case of a managing agency corporation to which Schedule VIII applies, where, by reason of any change in its constitution in conjunction with the changes which may have previously taken place, the aggregate of the voting rights possessed by (i) such of the members thereof as were members of the corporation at the time when the managing agency agreement was executed, and (ii) such of the members of the corporation as may have succeeded by inheritance to those who were members at the date aforesaid, falls below fifty-one per cent of the total voting rights possessed by all the persons who are members of the corporation at the time of the change, the corporation shall—

- (a) cease to act as managing agent from the date on which the change aforesaid comes into operation or on which notice of the change is given to the corporation in pursuance of this Act, whichever is later, and
- (b) again become entitled to act as managing agent if, and only if, the change is approved by a special resolution passed by the company.

*Explanation.*—For the purposes of this section—

- (i) “member” means a share holder of any class, and includes preference share holder or debenture holder, having a right to vote at any meeting of the company, irrespective of whether such right is exercisable in all or only in specified cases or circumstances ;
- (ii) “inheritance” includes inheritance from the heir of a member or from the last of a chain of successive heirs starting with the heir of a member.

**327. Application of sections 325 and 326 after approval of change in constitution of managing agency firm or corporation.**—Where any change in the constitution of a managing agency firm or corporation has been approved by a special resolution passed by the company in pursuance of section 325 or 326, the provisions of that section shall apply, in relation to subsequent changes in the constitution of the firm or corporation, as if for the references therein to the date of execution of the managing agency agreement, references to the date of the passing of such resolution had been substituted.

**328. Application of Schedule VIII to certain managing agents.—**

(1) The provisions of Schedule VIII shall apply—

- (a) to every firm or private company which acts as the managing agent of any company, whether public or private ; and
- (b) save as provided in sub-section (2), to every public company or other body corporate (not being a private company) which acts as the managing agent of any company, whether public or private.

(2) A body corporate (not being a private company) acting as managing agent shall, if and so long as its shares are dealt in, or quoted on, any of the stock exchanges in or outside India notified by the Central Government in this behalf, be exempt from the operation of sub-section (1) unless the Central Government, by notification in the Official Gazette, otherwise directs:

Provided that the Central Government may, by order, modify or limit the operation of this sub-section in relation to any body corporate in such manner as that Government thinks fit.

(3) If default is made by a managing agent to which Schedule VIII applies in complying with the provisions thereof,—

- (a) if the managing agent is a firm, every partner therein who is in default ; and
- (b) if the managing agent is a body corporate, the body corporate and every director or other officer thereof who is in default ;

shall be punishable with fine which may extend to fifty rupees for every day during which the default continues.

*Remuneration of managing agents*

**329. Remuneration of managing agent ordinarily not to exceed 12 1/2 per cent of "net profits".**—Save as otherwise expressly provided in this Act, a company shall not pay to its managing agent, in respect of any financial year beginning at or after the commencement of this Act, by way of remuneration, whether in respect of his services as managing agent or in any other capacity, any sum in excess of twelve and a half per cent of the net annual profits of the company.

**330. Determination of "net profits".**—(1) In computing the net profits of a company for the purpose of section 329—

- (a) credit shall be given to the sums specified in sub-section (2), and credit shall not be given to the sums specified in sub-section (3); and
- (b) the deductions specified in sub-section (4) shall be made, and those specified in sub-section (5) shall not be made.

(2) In making the computation aforesaid, credit shall be given to the following sums :—

bounties and subsidies received from any Government, or any public authority constituted or authorised in this behalf by any Government, unless and except in so far as the Central Government otherwise directs.

(3) In making the computation aforesaid, credit shall not be given to the following sums :—

- (a) profits, in the nature of premium, on shares or debentures of the company, which are issued or sold by the company ;



- (b) profits on sales by the company of forfeited shares ;
- (c) profits from the sale of the undertaking of the company or of any part thereof, or except in the case of companies whose business consists, whether wholly or partly, of buying and selling any immovable property or fixed assets of a capital nature, of any immovable property or fixed assets of a capital nature comprised in the undertaking, or where the company has two or more undertakings, of any such undertaking or of any part thereof, or except as aforesaid, of any immovable property or fixed assets comprised therein.

(4) In making the computation aforesaid, the following deductions shall be made :—

- (a) all the usual working charges ;
- (b) directors' remuneration ;
- (c) bonus or commission paid to any member of the company's staff, or to any engineer, technician or person employed or engaged by the company, whether on a whole-time or on a part-time basis ;
- (d) any tax notified by the Central Government as being in the nature of a tax on excess or abnormal profits ;
- (e) any tax on business profits imposed for special reasons or in special circumstances and notified by the Central Government in this behalf ;
- (f) interest on debentures issued by the company ;
- (g) interest on mortgages executed by the company and on loans and advances secured by a charge on its fixed or floating assets ;
- (h) interest on unsecured loans and advances ;
- (i) expenses on repairs, whether to immovable or to movable property, provided the repairs are not of a capital nature ;
- (j) outgoings ;
- (k) depreciation to the extent specified in section 331 ;
- (l) the loss (not including any loss of a capital nature) incurred in any year subsequent to the commencement of this Act, in so far as it has not been taken into account in arriving at the net profits of that year or of any subsequent year preceding the year in respect of which the net profits have to be ascertained for the purpose of section 329 ;
- (m) any compensation or damages to be paid in virtue of any legal liability, including a liability arising from a breach of contract ;
- (n) any sum paid by way of insurance against the risk of meeting any liability such as is referred to in clause (m).

(5) In making the computation aforesaid, the following deductions shall not be made :—

- (a) the remuneration payable to the managing agent ;
- (b) income-tax and super-tax payable by the company under the Indian Income-tax Act, 1922 (XI of 1922), or any other tax on the income of the company not falling under clauses (d) and (e) of sub-section (4) ;
- (c) any compensation, damages or payments made voluntarily, that is to say, otherwise than in virtue of a liability such as is referred to in clause (m) of sub-section (4).

**331. Ascertainment of "depreciation".**—The amount of depreciation to be deducted in pursuance of clause (k) of sub-section (4) of section 330—

- (a) shall be the amount of normal depreciation allowable under the Indian Income-tax Act, 1922 (XI of 1922) ;
- (b) shall not include any special, initial or other depreciation whether allowable under that Act or otherwise ;
- (c) shall not include any arrears of depreciation :

Provided that arrears of depreciation may be taken into account in the first of the financial years referred to in section 329, in so far as these arrears have not been taken into account in arriving at the net profits of any year or years, preceding the first year aforesaid.

**332. Special provision where there is a profit-sharing arrangement between two or more companies.**—Where there is an arrangement between two or more companies to share their profits and not less than two of those companies have the same managing agent, any profits paid in pursuance of the arrangement by any of the companies last-mentioned to any other or others of them shall—

- (a) be excluded from the net profits of the company making such payment ; and
- (b) be included in the net profits of the company receiving such payment, or where more than one company receives such payment, be included in the net profits of each of the receiving companies, to the extent of the payment received by it.

**333. Additional remuneration to be sanctioned by special resolution and approved by Central Government.**—Additional remuneration in excess of the limit specified in section 329 may be paid to the managing agent if, and only if, such remuneration is sanctioned by a special resolution of the company and is approved by the Central Government as being in the public interest.

**334. Minimum remuneration in case of no profits or inadequate profits.**—(1) Notwithstanding anything contained in section 333, if in any financial year, a company has no profits or its profits are inadequate, the company may pay to its managing agent, by way of minimum remuneration, such sum not exceeding fifty thousand rupees as it considers reasonable.

(2) The minimum remuneration aforesaid shall be provided for either by an amendment of the articles of the company made after the commencement of this Act, or by a resolution of the company passed at an annual general meeting held after such commencement, and in either case, the managing agency agreement shall be suitably modified.

**335. Time of payment of remuneration.**—The remuneration payable to the managing agent for any financial year or part thereof shall not become due, and shall not be paid to him, until the accounts of the company for such financial year have been audited and laid before the company in general meeting :

Provided that the minimum remuneration, if any, payable under section 334 may be paid to the managing agent in such suitable instalments as may

be specified either in the articles of the company or in a resolution passed by it at an annual general meeting or in the managing agency agreement executed by the company.

**336. Managing agent not entitled to office allowance but entitled to be reimbursed in respect of expenses.**—The managing agent shall not be paid any office allowance, but he may be reimbursed in respect of any expenses incurred by him on behalf of the company and sanctioned by the directors of the company or by the company in general meeting; and nothing contained in sections 329 to 335 shall be deemed to prohibit his being so reimbursed.

**337. Saving.**—Sections 329 to 336 shall not apply to a private company unless it is a subsidiary of a public company.

**338. Appointment of managing agent or associate as selling agent of goods produced by the company.**—(1) No managing agent of a company, and no associate of a managing agent, shall receive any commission or other remuneration from the company, in respect of sales of goods produced by the managed company, if the sales are made from the premises at which they are produced or from the head office of the managing agent or from any other place within the same State as that in which such premises or head office is situated.

(2) For sales of any goods produced by the company which are effected at any place situated outside the State aforesaid, the managing agent or an associate of the managing agent, may be appointed as a selling agent subject to the following conditions, namely :—

- (a) that the managing agent or associate is already maintaining an office at such place for his own business, that is to say, for any business not connected with that of the company;
- (b) that the remuneration payable in respect of the work done by the managing agent or associate as selling agent is in accordance with the terms of a special resolution passed by the company in that behalf ; and
- (c) that no other expenses are payable by the company to the managing agent or associate.

(3) Any appointment made in pursuance of sub-section (2) shall not be made for a term exceeding five years but may be renewed from time to time for a term not exceeding five years on each occasion:

Provided that such renewal shall be effected only in the last year of the existing term.

(4) The special resolution referred to in clause (b) of sub-section (2) shall set out the material terms subject to which the appointment of selling agent is made ; and one of those terms shall be that in respect of any goods supplied by the company for sale, payment shall be made by the managing agent or associate within one month, or in special circumstances specified in the resolution within three months, from the date on which the supply was so made.

(5) Every appointment made under sub-section (2) and all particulars relating thereto shall be entered in a register maintained for the purpose

**339. Application of section 338 to case where business of company consists of the supply or rendering of any services.**—Where and in so far as the business of a company consists in the supply or rendering of any

services, the provisions of section 338 shall apply in respect of any such business procured for the company by its managing agent or any associate of its managing agent, outside the State in which the services are to be supplied or rendered or in which the head office of the managing agent is situated, in like manner as those provisions will apply in respect of sales of any goods produced by a company, which are effected outside the State referred to in sub-section (1) of that section.

**340. Appointment of managing agent or associate as buying agent for company.**—(1) Save as provided in this section, no managing agent of a company, and no associate of a managing agent, shall receive any payment, whether by way of expenses, commission or otherwise, from the company in respect of purchases of goods made on its behalf.

(2) Where purchases of goods are made on behalf of a company by the managing agent or an associate of the managing agent, at any place outside the State in which the goods so purchased are to be used by the company, then, if the managing agent or associate maintains an office at such place for his own business, that is to say, for any business not connected with that of the company, he may receive, at the option of the company, either—

- (a) such part of the expenses of such office as may reasonably be attributed to the purchases made on behalf of the company as aforesaid : or
- (b) remuneration by way of commission or otherwise in respect of the work done by the managing agent or associate in making such purchases.

(3) In cases to which clause (a) of sub-section (2) applies, the maximum amount which may be paid to the managing agent shall be specified in a special resolution passed by the company; and in cases to which clause (b) of that sub-section applies, the remuneration payable to the managing agent or associate shall be in accordance with the terms of a special resolution passed by the company in that behalf.

(4) The special resolution referred to in sub-section (3) shall set out in sufficient detail the nature of the office maintained by the managing agent or associate outside the State aforesaid, the purposes for which it is maintained, the scale of its operations, the amount of the purchases likely to be made by it in each year on behalf of the company and the proportion which such amount will bear to the total amount of its purchases, the expenses incurred in maintaining the office, and the proportion of those expenses which may be reasonably attributed to the work done on behalf of the company.

(5) The special resolution shall not remain in force for a term exceeding three years but may be renewed from time to time for a term not exceeding three years on each occasion :

Provided that such renewal shall be effected only in the last year of an existing term.

(6) Every resolution passed in pursuance of this section shall be entered in a register maintained by the company for the purpose.

**341. Commission etc., of managing agent as buying or selling agent of other concerns.**—(1) The company in general meeting may, by resolution, authorise its managing agent or any associate of its managing agent to retain any commission or other remuneration earned by such agent or associate as the managing agent, manager, agent, secretary or selling or

buying agent of any firm, body corporate or other concern in respect of any goods, power, freight, repairs or other services, for the sale, purchase, supply or rendering of which a contract has been entered into by such firm, body or concern with the company, provided the prices or amounts charged to or received by the company are at market rates or are otherwise reasonable.

(2) Every contract so entered into and all particulars relating thereto shall be entered in a separate register maintained for the purpose.

**342. Contracts between managing agent or associate and company for the sale or purchase of goods or the supply of services etc.—**

(1) A company may, by special resolution, approve of any contract being entered into with its managing agent or an associate of its managing agent, for a period not exceeding three years at a time—

(a) for the sale, purchase or supply of any property, movable or immovable, or for the supply or rendering of any service ;

(b) for the underwriting of any shares or debentures to be issued or sold by the company ;

(2) The special resolution aforesaid shall—

(a) set out the material terms of the contract proposed to be entered into, and

(b) provide specifically that for any property supplied or sold, or any services supplied or rendered, by the company, the managing agent or associate shall make payment to the company within one month from the date of the supply or sale of the goods, or the supply or rendering of the service, as the case may be.

(3) Every such contract and the details thereof shall be entered in a separate register maintained for the purpose.

**343. Existing contracts relating to matters dealt with in sections 338 to 342 to terminate on 1st March, 1957.**—All contracts in force at the commencement of this Act and to which a company or a managing agent or an associate of the managing agent of a company is a party shall, in so far as the contracts relate to any of the matters referred to in sections 338 to 342, be deemed to terminate on the first day of March, 1957 ; unless they terminate on an earlier date.

**344. Registers to be open to inspection.**—The registers referred to in sections 338, 340, 341, and 342 shall be open to inspection, and extracts may be taken therefrom and copies thereof may be required, by any member of the company, in the same manner, to the same extent and on payment of the same fees, as if it were the register of members of the company.

**345. Remuneration received in contravention of foregoing sections to be held in trust for company.**—Where the managing agent of a company or an associate of the managing agent, receives any sum from the company, whether directly or indirectly, by way of remuneration, rebate, commission, or otherwise,—

(a) in the case of a public company or a private company which is a subsidiary of a public company, in contravention of sections 329 to 336 and sections 338 to 343, or

(b) in the case of a private company which is not a subsidiary of a public company, in contravention of sections 338 to 343, the managing agent or associate shall account to the company for such sum as if he held it in trust for the company.

*Assignment of, or charge on, remuneration*

**346. Company not to be bound by assignment of, or charge on, managing agent's remuneration.**— Any assignment of, or charge on, his remuneration or any part thereof effected by a managing agent shall be void as against the company.

This section shall not affect the rights *inter se* of the managing agent and any person other than the company.

*Office Compensation for loss of office*

**347. Prohibition of payment for compensation for loss of office by managing agent in certain cases.**—A company shall not pay to its managing agent any compensation for the loss of his office in the following cases:—

- (a) where the managing agent resigns his office in view of the reconstruction of the company or of its amalgamation with any other body corporate or bodies corporate and is appointed as the managing agent, manager or other officer of the reconstructed company or of the body corporate resulting from the amalgamation;
- (b) where the managing agent resigns his office, otherwise than on the reconstruction of the company or its amalgamation as aforesaid;
- (c) where the managing agent is deemed to have vacated his office in pursuance of clause (a), clause (b) or clause (c) of section 315 or of section 317;
- (d) where the managing agent is deemed to have vacated his office in pursuance of clause (d) of section 315, provided the winding up of the company was due to the negligence or default of the managing agent;
- (e) where the managing agent is deemed to have been suspended, or is suspended, from his office in pursuance of section 316 or sub-section (2) of section 321;
- (f) where the managing agent is, or may be, removed from office by a resolution in pursuance of section 318 or 319; and
- (g) where the managing agent has instigated, or has taken part, directly or indirectly in bringing about, the termination of his office.

**348. Limit of compensation for loss of office.**—The compensation which may be paid by a company to its managing agent for loss of office shall not exceed the remuneration which he would have earned if he had been in office for the unexpired residue of his term, or for five years, whichever is shorter, calculated on the basis of the average remuneration actually earned by him during a period of five years immediately preceding the date on which his office ceased or was terminated, or where he held the office for a lesser period, during such period :

Provided that in the event of the commencement of the winding up of the company, whether before or, at any time within twelve months after, the

date of the cessation or termination of the office of managing agent, no compensation shall be payable to him if the assets of the company on the winding up are not sufficient to repay the share capital (including premiums) contributed by the members of the company.

**349. Damages for wrongful termination of office.**—(1) Nothing contained in sections 347 and 348 shall prejudice or restrict the right of a managing agent who has been wrongfully dismissed or whose office has been wrongfully terminated, to claim damages from the company in a Court of Law.

(2) No payment shall be made by a company, by way of damages, to its managing agent for wrongful dismissal or wrongful termination of office, unless a Court of Law has held either that the dismissal or termination was wrongful or that the payment proposed and the amount thereof are reasonable in all the circumstances of the case.

*Other Rights and liabilities Not Affected on Termination of Office*

**350. Managing agent's rights and liabilities after termination of office.**—Where the office of a managing agent ceases or is terminated—

- (a) the managing agent and the company shall be entitled to enforce any claim or demand which each may have against the other, in respect of anything done or omitted to be done by either of them before the cessation or termination of the managing agency ; and
- (b) the rights and liabilities, in relation to the company, of the managing agent in any other capacity, shall not be affected.

*Powers of, and Restrictions on, Managing agents*

**351. General powers of managing agents.**—The managing agent of a company, whether appointed before or after the commencement of this Act, shall be subject to the superintendence, control and direction of the directors of the company, except to such extent as is otherwise provided in Schedule VII.

**352. Loans to managing agent.**—(1) No public company, and no private company which is a subsidiary of a public company, shall make any loan to, or give any guarantee or provide any security in connection with a loan made by any other person to,—

- (a) its managing agent or any associate of its managing agent; or
- (b) any body corporate in respect of which the Central Government, by order, declares that it is satisfied that the directors, managing director, managing agent or manager thereof is accustomed to act in accordance with the directions or instructions of the managing agent or associate of the managing agent, notwithstanding that the body corporate may not itself be an associate of the managing agent.

(2) Nothing contained in sub-section (1) or in section 273 shall apply to any credit given by the company to its managing agent for the purposes of facilitating the company's business and held by such agent in his own name in one or more current accounts, subject to limits previously approved by the directors of the company and on no account exceeding twenty thousand rupees in the aggregate.

**353. Loans etc., to companies under the same management.—(1)** No company (hereinafter in this section referred to as “the lending company”) shall—

- (a) make any loan, or
- (b) give any guarantee, or provide any security, in connection with a loan made by any other person,

to any body corporate which is under the same management as the lending company, unless the making of such loan, the giving of such guarantee or the provision of such security has been previously authorised by a special resolution of the lending company.

*Explanation.*—For the purposes of this sub-section, two bodies corporate shall be deemed to be under the same management—

- (i) if the managing agent, managing director or manager of the one body, or where such managing agent is a firm, any partner in the firm, or where such managing agent is a private company, any director of such company, is—
  - (a) the managing agent, managing director or manager of the other body, or
  - (b) a partner in the firm acting as a managing agent of the other body, or
  - (c) a director of the private company acting as a managing agent of the other body, or
- (ii) if a majority of the directors of the one body constitute, or at any time within the six months immediately preceding, constituted a majority of the directors of the other body.

(2) Nothing contained in sub-section (1) shall apply to any loan made guarantee given or security provided—

- (a) by a holding company to its subsidiary, or
- (b) by the managing agent to any company under his management.

**354. Penalty for contravention of section 352 or 353.—(1)** Every person who is a party to any contravention of section 352 or 353 including in particular any person to whom the loan is made, or in whose interest the guarantee is given or the security is provided, shall be punishable with fine which may extend to five thousand rupees or with simple imprisonment for a term which may extend to six months :

Provided that where any loan in connection with which any such guarantee or security has been given or provided by the lending company has been repaid in full, no punishment by way of imprisonment shall be imposed under this sub-section ; and where the loan has been repaid in part, the maximum punishment which may be imposed under this sub-section by way of imprisonment shall be proportionately reduced.

(2) All persons who are parties to any such contravention shall be liable, jointly and severally, to the lending company for the repayment of the loan, or for making good the sum which the lending company may have been called upon to pay in virtue of the guarantee given or the security provided by such company.



**355. Purchase by company of shares etc., of other companies in same group.**—(1) A company (hereinafter in this section and section 356 referred to as “the investing company”) shall not be entitled to subscribe for, or purchase, the shares or debentures of any body corporate belonging to the same group as the investing company, except to the extent and except in accordance with the restrictions and conditions specified in this section.

(2) The directors of the investing company shall be entitled to invest in any shares or debentures of any other body corporate in the same group up to not more than ten per cent of the subscribed capital of such other body corporate :

Provided that the aggregate of the investments so made by such directors in all other bodies corporate in the same group shall not exceed twenty per cent of the subscribed capital of the investing company.

(3) The investing company shall not make any investment in the shares or debentures of any other body corporate in the same group, in excess of the limits specified in sub-section (2) and the proviso thereto, unless the investment is sanctioned by a special resolution of the investing company.

(4) No investment shall be made by the directors of a company in pursuance of sub-section (2), unless it is sanctioned by a resolution passed at a directors' meeting with the consent of all the directors present at the meeting, and unless further notice of the meeting and of the resolution proposed to be moved thereat has been given to all the directors then in India.

(5) Every company shall annex to each balance sheet prepared by it after the commencement of this Act, a list of the bodies corporate in the same group in the shares or debentures of which investments have been made by it, and of the nature and extent of the investments so made in each such body corporate.

(6) For the purposes of this section, a body corporate shall be deemed to be in the same group as the investing company—

(a) if the body corporate aforesaid is the managing agent of the investing company, or

(b) if the body corporate aforesaid and the investing company should, in virtue of the *Explanation* to sub-section (1) of section 353, be deemed to be under the same management.

(7) The provisions of this section [except sub-section (5)] shall apply to an investment company, that is to say, to a company whose principal business is the acquisition of shares, stock, debentures or other securities.

(8) This section shall not apply—

(a) to any banking or insurance company ; or

(b) to a private company, unless it is a subsidiary of a public company ;

(c) to investments by a holding company in its subsidiary ; or

(d) to investments by a managing agent in a company managed by him.

**356. Investments made before commencement of Act.**—(1) Where any investments have been made by a company at any time after the first day of April, 1952, which, if section 355 had been then in force, could not have been made except on the authority of a special resolution passed

by the investing company, the sanction of the company by means of a special resolution shall be obtained to such investments, within six months from the commencement of this Act ; and if such sanction is not so obtained, the directors of the company shall dispose of the investments, in so far as they may be in excess of the limits specified in sub-section (2) of section 355 and the proviso to that sub-section, within one year from the commencement of this Act.

(2) If default is made in complying with the provisions of sub-section (1), every officer of the company who is in default shall be punishable with fine which may extend to five thousand rupees.

**357. Managing agent not to engage in business competing with business of managed company.**—(1) A managing agent shall not engage on his own account in any business, which is of the same nature as, and directly competes with, the business carried on by a company of which he is the managing agent or by a subsidiary of such company, unless such company by special resolution permits him to do so.

(2) For the purposes of sub-section (1), a managing agent shall be deemed to be engaged in business on his own account, if such business is carried on by—

- (a) a firm in which he is a partner ; or
- (b) a private company at any general meeting of which not less than twenty per cent of the total voting power may be exercised or controlled by any of the following persons, or by any two or more of them acting together, namely, (i) the managing agent aforesaid; (ii) where such managing agent is a firm, any partner in the firm ; and (iii) where such managing agent is a body corporate any officer of the body corporate ;
- (c) a body corporate (not being a private company) at any general meeting of which not less than seventy per cent of the total voting power may be exercised or controlled by any of the following persons, or by any two or more acting together, namely, (i) the managing agent aforesaid; (ii) where such managing agent is a firm, any partner in the firm; and (iii) where such managing agent is a body corporate, any officer of such body corporate.

(3) If a managing agent engages in any business in contravention of this section, he shall be deemed to have received all profits and benefits accruing to him from such business, in trust for the company under his management or the subsidiary of such company, as the case may be ; and where such profits and benefits are deemed to have been so received by the managing agent in trust for two or more such companies or subsidiaries, such profits and benefits shall be held by the managing agent in trust for each of them in such proportions as may be agreed upon between them or, failing such agreement, as may be decided by the Court.

**358. Condition prohibiting reconstruction or amalgamation of company except on continuance of managing agent to be void.**—Any provision in the memorandum or articles of a company, or in any resolution passed in general meeting by or by, the directors of, the company or in an agreement between the company and its managing agent whether made before or after the commencement of this Act, shall be void in so far as it prohibits the reconstruction of the company or its amalgamation

with any other body corporate or bodies corporate, either absolutely or except on the condition that the managing agent is appointed or re-appointed as a managing agent, managing director or manager of the reconstructed company or of the body resulting from amalgamation, as the case may be.

**359. Restrictions on right of managing agent to appoint directors.**—(1) The managing agent of a company may, if so authorised by its articles, appoint not more than one-third of the directors of the company.

(2) The managing agent may, at any time, remove any director so appointed, and appoint another director in his place or in the place of a director so appointed who resigns or otherwise vacates his office.

(3) Any provision contained in the articles of, or in any agreement with, the company, authorising the managing agent to appoint more than one-third of the directors of the company, which is in force immediately before the commencement of this Act, shall, in regard to the excess over one-third, be void, with effect from the expiry of one month from such commencement.

(4) Where at the commencement of this Act, the number of directors appointed by the managing agent exceeds one-third, the managing agent shall determine which of them shall continue to hold office and intimate the choice made by him to the company before the expiry of one month from such commencement; and only the directors so chosen shall continue to hold office as directors after such expiry.

(5) If no choice is made by the managing agent as aforesaid, all the directors appointed by him shall, with effect from the expiry of one month from the commencement of this Act, be deemed to have vacated their offices.

#### (IV) ARBITRATION, COMPROMISES, ARRANGEMENTS AND RECONSTRUCTIONS

**360. Power for companies to refer matters to arbitration.**—(1) A company may, by written agreement, refer to arbitration, in accordance with the Arbitration Act, 1940 (X of 1940), an existing or future difference between itself and any other company or person.

(2) A company which is a party to an arbitration may delegate to the arbitrator power to settle any terms or to determine any matter, capable of being lawfully settled or determined by the company itself, or by its directors, managing director, managing agent, or manager.

(3) The provisions of the Arbitration Act, 1940 (X of 1940), shall apply to all arbitrations in pursuance of this Act to which a company is a party.

**361. Interpretation of sections 362 and 363.**—In sections 362 and 363 —

(a) the expression “company” means any company liable to be wound up under this Act;

(b) the expression “arrangement” includes a reorganization of the share capital of the company by the consolidation of shares of different classes or by the division of shares into shares of different classes or by both those methods; and

(c) unsecured creditors who may have filed suits or obtained decrees shall be deemed to be of the same class as other unsecured creditors.

**362. Power to compromise with creditors and members.—(1)** Where a compromise or arrangement is proposed—

- (a) between a company and its creditors or any class of them; or
- (b) between a company and its members or any class of them;

the Court may, on the application of the company or of any creditor or member of the company, or, in the case of a company which is being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members or class of members, as the case may be, to be called, held and conducted in such manner as the Court directs.

(2) If a majority in number representing three-fourths in value of the creditors or class of creditors or members or class of members, as the case may be, present and voting either in person or, where proxies are allowed, by proxy, at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Court, be binding on all the creditors, all the creditors of the class, all the members, or all the members of the class, as the case may be, and also on the company, or, in the case of a company in the course of being wound up, on the liquidator and contributories of the company.

(3) An order made by the Court under sub-section (2) shall have no effect until a certified copy of the order has been filed with the Registrar; and a copy of every such order shall be annexed to every copy of the memorandum of the company issued after the certified copy of the order has been filed as aforesaid, or in the case of a company not having a memorandum, to every copy so issued of the instrument constituting or defining the constitution of the company.

(4) If default is made in complying with sub-section (3), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to ten rupees for each copy in respect of which default is made.

(5) The Court may, at any time after an application has been made to it under this section, stay the commencement or continuation of any suit or proceeding against the company on such terms as the Court thinks fit, until the application is finally disposed of.

(6) An appeal shall lie from any order made by a Court exercising original jurisdiction under this section to the authority empowered to hear appeals from the decisions of that Court.

**363. Information as to compromises with creditors and members.—(1)** Where a meeting of creditors or any class of creditors or of members or any class of members is called under section 362, there shall—

- (a) with every notice calling the meeting which is sent to a creditor or member, be sent also a statement setting forth the terms of the compromise or arrangement and explaining its effect; and in particular stating any material interests of the directors, managing director, managing agent or manager of the company, whether in their capacity as such or as members or as creditors of the company or otherwise, and the effect thereon of the compromise or arrangement, if, and in so far as, it is different from the effect on the like interests of other persons; and

- (b) in every notice calling the meeting which is given by advertisement, be included either such a statement as aforesaid or a notification of the place at which and the manner in which creditors or members entitled to attend the meeting may obtain copies of such a statement as aforesaid.
- (2) Where the compromise or arrangement affects the rights of debenture holders of the company, the said statement shall give the like explanation as respects the trustees of any deed for securing the issue of the debentures as it is required to give as respects the company's directors.
- (3) Where a notice given by advertisement includes a notification that copies of a statement setting forth the terms of the compromise or arrangement proposed and explaining its effect can be obtained by creditors or members entitled to attend the meeting, every such creditor or member shall, on making application in the manner indicated by the notice, be furnished by the company, free of charge, with a copy of the statement.
- (4) Where default is made in complying with any of the requirements of this section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five thousand rupees ; and for the purpose of this sub-section any liquidator of the company and any trustee of a deed for securing the issue of debentures of the company shall be deemed to be an officer of the company :

Provided that a person shall not be punishable under this sub-section if he shows that the default was due to the refusal of any other person, being a director, managing director, managing agent, manager or trustee for debenture holders, to supply the necessary particulars as to his material interests.

- (5) It shall be the duty of any director, managing director, managing agent or manager of the company and of any trustee for debenture holders of the company, to give notice to the company of such matters relating to himself as may be necessary for the purposes of this section, and any person who makes default in complying with this sub-section shall be punishable with fine which may extend to five hundred rupees.

**364. Provisions for facilitating reconstruction and amalgamation of companies.**—(1) Where an application is made to the Court under section 361 for the sanctioning of a compromise or arrangement proposed between a company and any such persons as are mentioned in that section, and it is shown to the Court—

(a) that the compromise or arrangement has been proposed for the purposes of, or in connection with, a scheme for the reconstruction of any company or companies, or the amalgamation of any two or more companies, and

(b) that under the scheme the whole or any part of the undertaking or the property of any company concerned in the scheme (in this section referred to as a "transferor company") is to be transferred to another company (in this section referred to as "the transferee company"),

the Court may, either by the order sanctioning the compromise or arrangement or by any subsequent order, make provision for all or any of the following matters :—

- (i) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of any transfer company ;

- (ii) the allotment or appropriation by the transferee company of any shares, debentures, policies, or other like interests in that company which under the compromise or arrangement are to be allotted or appropriated by that company to or for any person ;
- (iii) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company ;
- (iv) the dissolution, without winding up, of any transferor company ;
- (v) the provision to be made for any persons who, within such time and in such manner as the Court directs, dissent from the compromise or arrangement ; and
- (vi) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out.

(2) Where an order under this section provides for the transfer of any property or liabilities, then, by virtue of the order, that property shall be transferred to and vest in, and those liabilities shall, be transferred to and become the liabilities of, the transferee company; and in the case of any property, if the order so directs, freed from any charge which is, by virtue of the compromise or arrangement, to cease to have effect.

(3) Where an order is made under this section, every company in relation to which the order is made shall cause a certified copy thereof to be filed with the Registrar for registration within fourteen days after the making of the order.

If default is made in complying with this sub-section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty rupees.

(4) In this section

(a) "property" includes property, rights and powers of every description and "liabilities" includes duties; and

(b) "transferee company" does not include any company other than a company within the meaning of this Act ; but "transferor company" includes and body corporate, whether a company within the meaning of this Act or not.

**365. Power to acquire shares of shareholders dissenting from scheme or contract approved by majority.**—(1) Where a scheme or contract involving the transfer of shares or any class of shares in a company (in this section referred to as "the transferor company") to another company, (in this section referred to as "the transferee company"), has, within four months after the making of the offer in that behalf by the transferee company, been approved by the holders of not less than nine-tenths in value of the shares whose transfer is involved (other than shares already held at the date of the offer by, or by a nominee for, the transferee company or its subsidiary), the transferee company may, at any time within two months after the expiration of the said four months, give notice in the prescribed manner to any dissenting shareholder that it desires to acquire his shares ; and when such a notice is given, the transferee company shall, unless, on an application made by the dissenting shareholder within one month from the date on which the notice was given, the Court thinks fit to order otherwise, be entitled and bound to acquire those shares on the terms on which, under the scheme or contract, the shares of the approving shareholders are to be transferred to the transferee company :

Provided that where shares in the transferor company of the same class as the shares whose transfer is involved are already held as aforesaid to a value

greater than one-tenth of the aggregate of the values of all the shares in the company of such class, the foregoing provisions of this sub-section shall not apply, unless—

- (a) the transferee company offers the same terms to all holders of the shares of that class (other than those already held as aforesaid) whose transfer is involved ; and
- (b) the holders who approve the scheme or contract, besides holding not less than nine-tenths in value of the shares (other than those already held as aforesaid) whose transfer is involved, are not less than three-fourths in number of the holders of those shares.

(2) Where, in pursuance of any such scheme or contract as aforesaid, shares or shares of any class, in a company are transferred to another company or its nominee, and those shares together with any other shares or any other shares of the same class, as the case may be, in the first-mentioned company held by, or by a nominee for, the transferee company or its subsidiary at the date of the transfer comprise nine-tenths in value of the shares, or the shares of that class, as the case may be, in the first-mentioned company, then,—

- (a) the transferee company shall within one month from the date of the transfer (unless on a previous transfer in pursuance of the scheme, or contract it has already complied with this requirement) give notice of that fact in the prescribed manner to the holders of the remaining shares or of the remaining shares of that class, as the case may be, who have not assented to the scheme or contract ; and
- (b) any such holder may within three months from the giving of the notice to him require the transferee company to acquire the shares in question ;

and where a shareholder gives notice under clause (b) with respect to any shares, the transferee company shall be entitled and bound to acquire those shares on the terms on which under the scheme or contract the shares of the approving shareholders were transferred to it, or on such other terms as may be agreed or as the Court on the application of either the transferee company or the shareholder thinks fit to order.

(3) Where a notice has been given by the transferee company under sub-section (1) and the Court has not, on an application made by the dissenting shareholder, made an order to the contrary, the transferee company shall, on the expiration of one month from the date on which the notice has been given, or, if an application to the Court by the dissenting shareholder is then pending, after that application has been disposed of, transmit a copy of the notice to the transferor company together with an instrument of transfer executed on behalf of the shareholder by any person appointed by the transferee company and on its own behalf by the transferee company, and pay or transfer to the transferor company the amount or other consideration representing the price payable by the transferee company for the shares which, by virtue of this section, that company is entitled to acquire; and the transferor company shall thereupon register the transferee company as the holder of those shares :

Provided that an instrument of transfer shall not be required for any share for which a share warrant is for the time being outstanding.

(4) Any sums received by the transferor company under this section shall be paid into a separate bank account, and any such sums and any other consideration so received shall be held by that company in trust for the several persons entitled to the shares in respect of which the said sums or other consideration were respectively received.

(5) In this section, the expression "dissenting shareholder" includes a shareholder who has not assented to the scheme or contract and any shareholder who has failed or refused to transfer his shares to the transferee company in accordance with the scheme or contract.

(6) In relation to an offer made by the transferee company to shareholders of the transferor company before the commencement of this Act, this section shall have effect—

- (a) with the substitution, in sub-section (1), for the words "the shares whose transfer is involved (other than shares already held at the date of the offer by, or by a nominee for, the transferee company or its subsidiary)," of the words "the shares affected" and with the omission of the proviso to that sub-section ;
- (b) with the omission of sub-section (2) ; and
- (c) with the omission, in sub-section (3), of the words "together with an instrument of transfer executed on behalf of the shareholder by any person appointed by the transferee company and on its own behalf by the transferee company" and of the proviso to that sub-section.

**366. Power of Central Government to provide for amalgamation of companies in national interest.**

—(1) Where the Central Government is satisfied that it is essential in the national interest that two or more companies should amalgamate, then, notwithstanding anything contained in sections 364 and 365 but subject to the provisions of this section, the Central Government may, by order notified in the Official Gazette, provide for the amalgamation of those companies into a single company with such constitution; with such property, powers, rights, interests, authorities and privileges; and with such liabilities, duties, and obligations; as may be specified in the order.

(2) The order aforesaid may contain such consequential, incidental and supplemental provisions as may, in the opinion of the Central Government, be necessary to give effect to the amalgamation.

(3) Every member or creditor (including a debenture holder) of each of the companies before the amalgamation shall have, as nearly as may be, the same interest in or rights against the company resulting from the amalgamation as he had in the company of which he was originally a member or creditor; and to the extent to which the interest or rights of such member or creditor in or against the company resulting from the amalgamation are less than his interest in or rights against the original company, he shall be entitled to compensation which shall be assessed by such authority as may be prescribed.

Such compensation shall be paid to the member or creditor concerned by the company resulting from the amalgamation.

(4) No order shall be made under this section unless—

- (a) a copy of the proposed order has been sent in draft to each of the companies concerned; and
- (b) the Central Government has considered, and made such modifications, if any, in the draft order as may seem to it desirable in the light of, any suggestions and objections which may be received by it within such period as the Central Government may fix in that behalf, not being less than two months from the date on which the copy aforesaid is received by the company, either from the company, or from any class of shareholders therein, or from any creditors or any class of creditors thereof.



(5) Copies of every order made under this section shall, as soon as may be after it has been made, be laid before each House of Parliament.

(v) REMEDIES IN CASES OF OPPRESSION AND MISMANAGEMENT

**367. Application for and grant of relief in cases of oppression.—**

(1) Any members of a company who complain that the affairs of the company are being conducted in a manner oppressive to any member or members (including any one or more of themselves) may apply to the Court for an order under this section, provided such members have a right so to apply in virtue of section 369.

(2) If, on any application under sub-section (1), the Court is of opinion—

(a) that the company's affairs are being conducted in a manner oppressive to any member or members, and

(b) that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding up order on the ground that it was just and equitable that the company should be wound up,

the Court may, with a view to bringing to an end the matters complained of, make such order as it thinks fit.

**368. Application for and grant of relief where interests of company prejudiced by mismanagement.—**(1) Any members of a company who complain—

(a) that the affairs of the company are being conducted in a manner prejudicial to the interests of the company, or

(b) that a material change (not being a change brought about by, or in the interests of any creditors including debenture holders, or any class of shareholders, of the company) has taken place in the management or control of the company, whether by an alteration in its board of directors, or of its managing agent, or in the constitution of the firm or body corporate acting as its managing agent, or in the ownership of the company's shares or if it has no share capital in its membership, or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to the interests of the company,

may apply to the Court for an order under this section, provided such members have a right so to apply in virtue of section 369.

(2) If, on any application under sub-section (1), the Court is of opinion that the affairs of the company are being conducted as aforesaid or that by reason of any material change as aforesaid in the management or control of the company, it is likely that the affairs of the company will be conducted as aforesaid the Court may, with a view to bringing to an end or preventing the matters complained of or apprehended make such order as it thinks fit.

**369. Right to apply under sections 367 and 368.—**(1) The following members of a company shall have the right to apply under section 367 or 368 :—

(a) in the case of a company having a share capital, not less than one-tenth of the total number of its members, or any member or members holding not less than one-tenth of the issued share capital

of the company, provided that in either case the applicant or applicants have paid all calls and other sums due on their shares;

(b) in the case of a company not having a share capital, not less than one-fifth of the total number of its members.

(2) For the purposes of sub-section (1), where any share or shares are held by two or more persons jointly, they shall be counted only as one member.

(3) Where any members of a company are entitled to make an application in virtue of sub-section (1), any one or more of them having obtained the consent in writing of the rest, may make the application on behalf and for the benefit of all of them.

(4) The Central Government may, if in its opinion circumstances exist which make it just and equitable so to do, authorise any member or members of the company to apply to the Court under section 367 or 368 notwithstanding that the requirements of clause (a) or clause (b), as the case may be, of sub-section (1) are not fulfilled.

The Central Government may, before authorising any member or members as aforesaid, require such member or members to give security for such amount as the Central Government may deem reasonable for the payment of any costs which the Court dealing with the application may order such member or members to pay to any other person or persons who are parties to the application.

**370. Notice to be given to Central Government of applications under sections 367 and 368.**—The Court shall give notice of every application made to it under section 367 or 368 to the Central Government, and shall take into consideration the representations, if any, made to it by that Government before passing a final order under that section.

**371. Right of Central Government to apply under sections 367 and 368.**—In cases falling under section 227, the Central Government may itself apply to the Court for an order under section 367 or 368.

**372. Powers of Court on application under section 367 or 368.**—Without prejudice to the generality of the powers of the Court under section 367 or 368, any order under either section may provide for—

- (a) the regulation of the conduct of the company's affairs in future ;
- (b) the purchase of the shares or interests of any members of the company by other members thereof or by the company ;
- (c) in the case of a purchase of its shares by the company as aforesaid, the consequent reduction of its share capital ;
- (d) the termination or modification of any agreement, howsoever arrived at, between the company on the one hand, and any of the following persons, on the other, namely,
  - (i) the managing director,
  - (ii) any other director,
  - (iii) the managing agent, and
  - (iv) the manager,

upon such terms and conditions as may, in the opinion of the Court, be just and equitable in all the circumstances of the case ;

Provided that no compensation shall be ordered to be paid to any such person, unless the Court is satisfied that it would be unjust and inequitable not to pay compensation to him ;

- (e) any other matter for which in the opinion of the Court it is just and equitable that provision should be made.

**373. Interim order by Court.**—Pending the making by it of a final order under section 367 or 368, as the case may be, the Court may, on the application of any party to the proceeding, make any interim order which it thinks fit for regulating the conduct of the company's affairs, upon such terms and conditions as appear to it to be just and equitable.

**374. Effect of alteration of memorandum or articles of company by order under section 367 or 368.**—(1) Where an order under section 367 or 368 makes any alteration in, or addition to, the memorandum or articles of a company, then, notwithstanding any other provision of this Act, the company shall not have power, except to the extent, if any, permitted in the order, to make without the leave of the Court, any alteration or addition whatsoever which is inconsistent with the order, in or to either the memorandum or the articles.

(2) Subject to the provisions of sub-section (1), the alterations or additions made by the order shall, in all respects, have the same effect as if they had been duly made by the company in accordance with the provisions of this Act; and the said provisions shall apply accordingly to the memorandum or articles as so altered or added to.

(3) A certified copy of every order altering or adding to, or giving leave to alter or add to, a company's memorandum or articles, shall within fifteen days after the making thereof, be filed by the company with the Registrar who shall register the same.

(4) If default is made in complying with the provisions of sub-section (3), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five thousand rupees.

**375. Addition of parties to application under section 367 or 368.**—If the managing director or any other director, the managing agent, or the manager of a company or any other person who has not been impleaded as a respondent to any application under section 367 or 368 applies to be added as a party thereto, the Court shall, if it is satisfied that there is sufficient cause for doing so, direct that he may be added as a party accordingly.

**376. Application of sections 500 to 505 to proceedings under sections 367 and 368.**—In relation to an application under section 367 or 368, sections 500 to 505 both inclusive, shall apply as if the company were in the course of being wound up, subject to the following modifications, namely:— (a) the omission from sub-section (1) of section 503 of the words "on the application of the Official Liquidator, the liquidator, or any creditor or contributory of the company" and of the second paragraph (b) the omission from sub-section (1) of section 504 of the words "on the application of the liquidator or of any creditor or contributory made within five years from the date of the first appointment of a liquidator in the winding up or of the misapplication, retainer, misfeasance or breach of trust, as the case may be, whichever is longer";

Provided that no action shall be taken under section 504 in respect of any person referred to therein, unless such person was concerned with the affairs of the company at the time of the application or at any time during the preceding twelve months or where the application is made within six months of an

interim or final report made by an inspector appointed under section 220 or 222 to investigate the affairs of the company, at the time of the commencement of the investigation or at any time during the period covered by the report of the inspector.

**377. Consequences of termination or modification of certain agreements.**—(1) Where an order of a Court made under section 367 or 368 terminates or modifies an agreement such as is referred to in clause (d) of section 372,—

(a) unless, and except to the extent to which, the order aforesaid makes provision in that behalf, the termination or modification shall not give rise to any claim whatever against the company by any person for damages or for compensation for loss of office or in any other respect, either in pursuance of the agreement or otherwise ;

(b) no managing or other director, managing agent or manager whose agreement is so terminated and no person who, at the date of the order terminating the agreement was, or subsequently becomes, an associate of such a managing agent, shall, for a period of five years from the date of the order terminating the agreement, without the leave of the Court, be appointed, or act, as the managing or other director, managing agent, or manager of the company.

(2) (a) Any person who knowingly acts as a managing or other director, managing agent or manager of a company in contravention of clause (b) of sub-section (1);

(b) where the person so acting as managing agent is a firm or body corporate, every partner in the firm, or every director of the body corporate who is knowingly a party to such contravention ; and

(c) every other director or every director, as the case may be, of the company, who is knowingly a party to such contravention ;

shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to five thousand rupees, or with both.

(3) No Court shall grant leave under clause (b) of sub-section (1) unless notice of the intention to apply for leave has been served on the Central Government and that Government has been given an opportunity of being heard in the matter.

#### (VI) MISCELLANEOUS PROVISIONS

##### *Contracts where company is undisclosed principal*

**378. Contracts by agents of company in which company is undisclosed principal.**—(1) Every person, being a managing agent, manager or other agent of a public company or of a private company which is a subsidiary of a public company, who enters into a contract for or on behalf of the company in which contract the company is an undisclosed principal shall, at the time of entering into the contract, make a memorandum in writing of the terms of the contract, and specify therein the person with whom it is entered into.

(2) Every such person who enters into a contract as aforesaid, shall forthwith deliver the memorandum to the company and send copies thereof to the directors ; and such memorandum shall be filed in the office of the company and laid before the directors at the next directors' meeting.

(3) If default is made in complying with the requirements of this section—

- (a) the contract shall, at the option of the company, be voidable as against the company ; and
- (b) the person aforesaid, or every officer who is in default, as the case may be, shall be punishable with fine which may extend to two hundred rupees.

*Issue of certificate of shares, etc.*

**379. Limitation of time for issue of certificates.**—(1) Every company shall, within three months after the allotment of any of its shares, debentures or debenture stock, and within three months after the registration of the transfer of any such shares, debentures or debenture stock, complete and have ready for delivery the certificates of all shares, the debentures, and the certificates of all debenture stock allotted or transferred, unless the conditions of issue of the shares, debentures or debenture stock otherwise provide.

The expression “transfer”, for the purposes of this sub-section, means a transfer duly stamped and otherwise valid, and does not include such a transfer as the company is for any reason entitled to refuse to register and does not register.

(2) If default is made in complying with sub-section (1), the company and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees for every day during which the default continues.

(3) If any company on which a notice has been served requiring it to make good any default in complying with the provisions of sub-section (1), fails to make good the default within ten days after the service of the notice, the Court may, on the application of the person entitled to have the certificates or the debentures delivered to him, make an order directing the company and any officer of the company to make good the default within such time as may be specified in the order; and any such order may provide that all costs of and incidental to the application shall be borne by the company or by any officer of the company responsible for the default.

*Right to receive accounts etc. of preference shareholders and debenture holders*

**380. Right of preference shareholders and debenture holders to receive and inspect accounts, reports, etc.**—(1) Holders of preference shares and debentures of a company shall have the same right to receive and inspect the balance sheet and profit and loss account of the company, the reports of the directors and auditors and other reports and documents as is possessed by the holders of equity shares in the company.

(2) This section shall not apply to—

(a) a private company, or

(b) a public company registered before the 1st day of April 1914 :

Provided that in the case of any public company, whether registered before or after the date aforesaid, the trustees for holders of debentures shall have the right conferred by sub-section (1) on holders of debentures of a company.

*Employees' securities and provident funds***381. Employees' securities to be deposited in Scheduled Bank.—**

(1) All moneys or securities deposited with a company by its employees in pursuance of their contracts of service with the company shall be kept or deposited by the company in a special account to be opened by the company for the purpose in a Scheduled Bank.

(2) No portion of such moneys or securities shall be utilised by the company except for the purposes agreed to in the contracts of service.

**382. Provisions applicable to provident funds of employees.—**

(1) Where a provident fund has been constituted by a company for its employees or any class of its employees, all moneys contributed to such fund (whether by the company or by the employees) or accruing by way of interest or otherwise to such fund, shall be either deposited in a Post Office Savings Bank account or invested in the securities mentioned or referred to in clauses (a) to (e) of section 20 of the Indian Trusts Act, 1882 (II of 1882).

(2) Notwithstanding anything to the contrary in the rules of any provident fund to which sub-section (1) applies or in any contract between a company and its employees, no employee shall be entitled to receive, in respect of such portion of the amount to his credit in such fund as is invested in accordance with the provisions of sub-section (1), interest at a rate exceeding the rate of interest yielded by such investment.

(3) Nothing in sub-section (1) shall affect any rights of an employee under the rules of a provident fund to obtain advances from or to withdraw money standing to his credit in the fund, where the fund is a recognised provident fund within the meaning of clause (a) of section 58A of the Indian Income-tax Act, 1922 (XI of 1922), or where the rules of the fund contain provisions corresponding to rules 4, 5, 6, 7, 8, and 9 of the Indian Income-tax (Provident Funds Relief) Rules.

(4) Where a separate trust has been created by a company with respect to any provident fund referred to in sub-section (1), the company shall be bound to collect the contributions of the employees concerned and pay such contributions as well as its own contributions, if any, to the trustees; but in other respects, the obligations laid on the company by this section shall devolve on the trustees and shall be discharged by them instead of by the company.

**383. Right of employee to see bank's receipt for moneys or securities referred to in section 381 or 382.—**An employee shall be entitled, on request made in this behalf to the company or to the trustees referred to in sub-section (4) of section 382, as the case may be, to see the bank's receipt for any money or security such as is referred to in sections 381 and 382.

**384. Penalty for contravention of sections 381, 382 and 383.—**Any officer of a company, or any such trustee of a provident fund as is referred to in sub-section (4) of section 382, who knowingly contravenes or authorises or permits the contravention of the provisions of section 381, 382 or 383, shall be punishable with fine which may extend to five hundred rupees.

*Receivers and Managers*

**385. Filing of accounts of receivers.—**Every receiver of the property of a company who has been appointed under the powers contained in

any instrument, and who has taken possession, shall once in every half year while he remains in possession, and also on ceasing to act as receiver, file with the Registrar an abstract in the prescribed form of his receipts and payments during the period to which the abstract relates.

**386. Invoices etc., to refer to receiver where there is one.—**

Where a receiver of the property of a company has been appointed, every invoice, order for goods, or business letter issued by or on behalf of the company, or the receiver of the company, being a document on or in which the name of the company appears, shall contain a statement that a receiver has been appointed.

**387. Penalty for non-compliance with sections 385 and 386.—**

If default is made in complying with the requirements of section 385 or 386, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to two hundred rupees.

For the purposes of this section, the receiver shall be deemed to be an officer of the company.

**388. Application of sections 385 to 387 to receivers and managers appointed by Court and managers appointed in pursuance of an instrument.—**The provisions of sections 385, 386 and 387 shall apply to the receiver or manager of the property of a company appointed by a Court or to the manager of the property of a company appointed under any powers contained in an instrument in like manner as they apply to a receiver appointed under any powers contained in an instrument.

PART V

WINDING UP

(I) PRELIMINARY

*Modes of winding up*

**389. Modes of winding up.—**(1) The winding up of a company may be either—

- (a) by the Court ; or
- (b) voluntary ; or
- (c) subject to the supervision of the Court.

(2) The provisions of this Act with respect to winding up apply, unless the contrary appears, to the winding up of a company in any of those modes.

*Contributories*

**390. Liability as contributories of present and past members.—**

(1) In the event of a company being wound up, every present and past member shall be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities and the costs, charges and expenses of the winding up, and for the adjustment of the rights of the contributories among themselves, subject to the provisions of section 391 and subject also to the following qualifications, namely :—

- (a) a past member shall not be liable to contribute if he has ceased to be a member for one year or upwards before the commencement of the winding up ;

- (b) a past member shall not be liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member;
- (c) a past member shall not be liable to contribute unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act ;
- (d) in the case of a company limited by shares, no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member ;
- (e) in the case of a company limited by guarantee, no contribution shall, subject to the provisions of sub-section (2), be required from any member exceeding the amount, if any, undertaken to be contributed by him to the assets of the company in the event of its being wound up ;
- (f) nothing in this Act shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of the policy or contract ;
- (g) a sum due to any member of the company, in his character of a member, by way of dividends, profits or otherwise, shall not be deemed to be a debt of the company payable to that member, in a case of competition between himself and any other creditor who is not a member of the company ; but any such sum shall be taken into account for the purpose of the final adjustments of the rights of the contributories among themselves.

(2) In the winding up of a company limited by guarantee which has a share capital, every member of the company shall be liable, in addition to the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up, to contribute to the extent of any sums unpaid on any shares held by him.

**391. Obligations of directors, managing agents and managers whose liability is unlimited.**—In the winding up of a limited company, any director, managing agent or manager, whether past or present, whose liability is, under the provisions of this Act, unlimited, shall, in addition to his liability, if any, to contribute as an ordinary member, be liable to make a further contribution as if he were, at the commencement of the winding up, a member of an unlimited company :

Provided that—

- (a) a past director, managing agent or manager shall not be liable to make such further contribution if he has ceased to hold office for a year or upwards before the commencement of the winding up ;
- (b) a past director, managing agent or manager shall not be liable to make such further contribution in respect of any debt or liability of the company contracted after he ceased to hold office ;



- (c) subject to the articles of the company, a director, managing agent or manager shall not be liable to make such further contribution unless the Court deems it necessary to require the contribution in order to satisfy the debts and liabilities of the company, and the costs, charges and expenses of the winding up.

**392. Definition of "contributory".**—The term "contributory" means every person liable to contribute to the assets of a company in the event of its being wound up ; and for the purposes of all proceedings for determining, and all proceedings prior to the final determination of, the persons who are to be deemed contributories, includes any person alleged to be a contributory.

**393. Nature of liability of contributory.**—(1) The liability of a contributory shall create a debt accruing due from him at the time when his liability commenced, but payable at the times specified in calls made on him for enforcing the liability.

(2) No claim founded on the liability of a contributory shall be cognizable by any Court of Small Causes sitting outside the presidency-towns.

**394. Contributories in case of death of member.**—(1) If a contributory dies either before or after he has been placed on the list of contributories, his legal representatives shall be liable in a due course of administration, to contribute to the assets of the company in discharge of his liability and shall be contributories accordingly.

(2) If the legal representatives make default in paying any money ordered to be paid by them, proceedings may be taken for administering the estate of the deceased contributory and compelling payment thereof of the money due.

(3) For the purposes of this section, where the deceased contributory was a member of a Hindu joint family governed by the Mitakshara School of Hindu Law, his legal representatives shall be deemed to include the surviving coparceners.

**395. Contributories in case of insolvency of member.**—If a contributory is adjudged insolvent, either before or after he has been placed on the list of contributories,—

(a) his assignees in insolvency shall represent him for all the purposes of the winding up, and shall be contributories accordingly, and may be called on to admit to proof against the estate of the insolvent, or otherwise to allow to be paid out of his assets in due course of law, any money due from the insolvent in respect of his liability to contribute to the assets of the company ; and

(b) there may be proved against the estate of the insolvent the estimated value of his liability to future calls as well as calls already made.

## (II) WINDING UP BY THE COURT

### *Cases in which company may be wound up by the Court*

**396. Circumstances in which company may be wound up by Court.**—A company may be wound up by the Court—

- (a) if the company has, by special resolution, resolved that the company be wound up by the Court ;
- (b) if default is made in delivering the statutory report to the Registrar or in holding the statutory meeting ;

- (c) if the company does not commence its business within a year from its incorporation, or suspends its business for a whole year ;
- (d) if the number of members is reduced, in the case of a public company, below seven, and in the case of a private company, below two ;
- (e) if the company is unable to pay its debts ;
- (f) if the Court is of opinion that it is just and equitable that the company should be wound up.

**397. Company when deemed unable to pay its debts.**—(1) A company shall be deemed to be unable to pay its debts—

- (a) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding five hundred rupees then due, has served on the company, by causing it to be delivered by registered post or otherwise at its registered office, a demand under his hand requiring the company to pay the sum so due and the company has for three weeks thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor ; or
- (b) if execution or other process issued on a decree or order of any Court in favour of a creditor of the company is returned unsatisfied in whole or in part ; or
- (c) if it is proved to the satisfaction of the Court that the company is unable to pay its debts, and, in determining whether a company is unable to pay its debts, the Court shall take into account the contingent and prospective liabilities of the company.

(2) The demand referred to in clause (a) of sub-section (1) shall be deemed to have been duly given under the hand of the creditor if it is signed by any agent or legal adviser duly authorised on his behalf, or in the case of a firm, if it is signed by any such agent or legal adviser or by any member of the firm on its behalf.

#### *Transfer of Proceedings*

**398. Winding up may be referred to District Court.**—Where a High Court makes an order for winding up a company under this Act, the High Court may, if it thinks fit, direct all subsequent proceedings to be had in a District Court ; and thereupon for the purposes of winding up the company, such District Court shall be deemed to be “ the Court ” within the meaning of this Act, and shall have all the jurisdiction and powers of the High Court.

**399. Transfer of winding up from one District Court to another.**—If during the progress of a winding up in a District Court, it appears to the High Court that the same could be more conveniently proceeded with in the High Court, or in any other District Court, the High Court may, as the case may require,—

- (a) withdraw the case and proceed with the winding up itself ; or
- (b) transfer the case to such other District Court, whereupon the winding up shall proceed in that District Court.

**400. Power of High Court to retain winding-up proceedings in District Court in which they ought not to have been commenced.**—The High Court may direct that a District Court in which proceedings for

winding up a company have been commenced, shall retain and continue the proceedings, although it may not be the Court in which they ought to have been commenced.

**401. Jurisdiction of High Court under sections 398, 399 and 400 to be exercised at any time and at any stage.**—The High Court shall have jurisdiction to pass orders under sections 398, 399 and 400 at any time and at any stage and either with or without application from any of the parties to the proceedings.

*Petition for winding up*

**402. Provisions as to applications for winding up.**—(1) An application to the Court for the winding up of a company shall be by petition presented, subject to the provisions of this section, —

- (a) by the company ; or
- (b) by any creditor or creditors, including any contingent or prospective creditor or creditors ; or
- (c) by any contributory or contributories ; or
- (d) by all or any of the parties specified in clauses (a), (b) and (c), whether together or separately ; or
- (e) by the Registrar ; or
- (f) in a case falling within section 227, by any person authorised by the Central Government in that behalf.

(2) A contributory shall not be entitled to present a petition for winding up a company unless—

- (a) either the number of members is reduced, in the case of a public company, below seven, and, in the case of a private company, below two ; or
- (b) the shares in respect of which he is a contributory or some of them either were originally allotted to him or have been held by him, and registered in his name, for at least six months during the eighteen months immediately before the commencement of the winding up, or have devolved on him through the death of a former holder.

(3) The Registrar shall not be entitled to present a petition for winding up a company except on the grounds specified in clauses (b), (c) and (e) of section 396 :

Provided that the Registrar shall not present a petition on the ground specified in clause (e) aforesaid, unless it appears to him either from the financial condition of the company as disclosed in its balance-sheet or from the report of an inspector appointed under section 220 or 222 that the company is unable to pay its debts :

Provided further that the Registrar shall obtain the previous sanction of the Central Government to the presentation of the petition on any of the grounds aforesaid.

(4) The Central Government shall not accord its sanction in pursuance of the foregoing proviso, unless the company has first been afforded an opportunity of being heard.

(5) A petition for winding up a company on the ground specified in clause (b) of section 396 shall not be presented—

(a) except by the Registrar or by a shareholder ; or

(b) before the expiration of fourteen days after the last day on which the statutory meeting referred to in clause (b) aforesaid ought to have been held.

(6) The Court shall not give a hearing to a petition for winding up a company presented by a contingent or prospective creditor

(a) unless, in the opinion of the Court, there is a *prima facie* case for winding up the company; and

(b) until such security for costs has been given as the Court think reasonable.

**403. Right to present winding up petition where company is being wound up voluntarily or subject to Court's supervision.—(1)** Where a company is being wound up voluntarily or subject to the supervision of the Court, a winding up petition may be presented by—

(a) any person authorised to do so under section 402, and subject to the provisions of that section ; or

(b) the Official Liquidator attached to the Court, if any.

(2) The Court shall not make a winding up order on a petition presented to it under sub-section (1), unless it is satisfied that the voluntary winding up or winding up subject to the supervision of the Court cannot be continued with due regard to the interests of the creditors or contributories or both.

#### *Commencement of winding up*

**404. Commencement of winding up by Court.—(1)** Where, before the presentation of a petition for the winding up of a company by the Court, a resolution has been passed by the company for voluntary winding up, the winding up of the company shall be deemed to have commenced at the time of the passing of the resolution, and unless the Court, on proof of fraud or mistake, thinks fit otherwise to direct, all proceedings taken in the voluntary winding up shall be deemed to have been validly taken.

(2) In any other case, the winding up of a company by the Court shall be deemed to commence at the time of the presentation of the petition for the winding up.

#### *Powers of Court hearing application*

**405. Power of Court to stay or restrain proceedings against company.—**At any time after the presentation of a winding up petition and before a winding up order has been made, the company or any creditor or contributory may—

(a) where any suit or proceeding against the company is pending in the Supreme Court or in any High Court, apply to the Court in which the suit or proceeding is pending for a stay of proceedings therein ; and

(b) where any suit or proceeding is pending against the company in any other Court, apply to the Court having jurisdiction to wind up the company to restrain further proceedings in the suit or proceeding ;

and the Court to which application is so made may stay or restrain the proceedings accordingly, on such terms as it thinks fit.

**406. Powers of Court on hearing petition.**—(1) On hearing a winding-up petition, the Court may—

- (a) dismiss it, with or without costs; or
- (b) adjourn the hearing conditionally or unconditionally; or
- (c) make any interim order that it thinks fit; or
- (d) make any other order that it thinks fit:

Provided that the Court shall not refuse to make a winding-up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets.

(2) Where the petition is presented by members of the company as contributories on the ground that it is just and equitable that the company should be wound up, the Court, if it is of opinion —

- (a) that the petitioners are entitled to relief either by the winding up of the company or by some other means ; and
- (b) that in the absence of any other remedy it would be just and equitable that the company should be wound up;

shall make a winding-up order, unless it is also of the opinion both that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound up instead of pursuing that other remedy.

(3) Where the petition is presented on the ground of default in delivering the statutory report to the Registrar, or in holding the statutory meeting, the Court may—

- (a) instead of making a winding-up order, direct that the statutory report shall be delivered or that a meeting shall be held ; and
- (b) order the costs to be paid by any persons who, in the opinion of the Court, are responsible for the default.

#### *Consequences of Winding-up Order*

**407. Order for winding up to be communicated to Official Liquidator.**—Where the Court makes an order for the winding up of a company, it shall (except where a liquidator is appointed simultaneously) forthwith cause intimation thereof to be sent to the Official Liquidator.

**408. Copy of winding up order to be filed with Registrar.**—(1) On the making of a winding up order, it shall be the duty of the petitioner in the winding-up proceedings and of the company to file with the Registrar a copy of the order, within a month from the date of the making of the order.

(2) On the filing of a copy of a winding-up order, the Registrar shall make a minute thereof in his books relating to the company, and shall notify in the Official Gazette that such an order has been made.

(3) Such order shall be deemed to be notice of discharge to the servants of the company, except when the business of the company is continued.

**409. Suits stayed on winding up order.**—When a winding-up order has been made or a provisional liquidator has been appointed, no suit or other legal proceeding shall be proceeded with or commenced against the company, except by leave of the Court and subject to such terms as the Court may impose.

**410. Effect of winding up order.**—An order for winding up a company shall operate in favour of all the creditors and of all the contributories of the company as if it had been made on the joint petition of a creditor and of a contributory.

### *Official Liquidators*

**411. Appointment of Official Liquidator.**—(1) For the purposes of this Act, so far as it relates to the winding up of companies by the Court,—

- (a) there shall be attached to each High Court an Official Liquidator appointed by the Central Government, who shall be a whole-time officer, unless the Central Government considers that there will not be sufficient work for a whole-time officer in which case a part-time officer may be appointed; and
- (b) the Official Receiver attached to a District Court for insolvency purposes, or if there is no such Official Receiver, then, such person as the Central Government may, by notification in the Official Gazette appoint for the purpose, shall be the Official Liquidator attached to the District Court.

(2) All references to the “Official Liquidator” in this Act shall be construed as references to the Official Liquidator referred to in clause (a) or clause (b), as the case may be, of sub-section (1).

### *Liquidators*

**412. Official Liquidator to be liquidator unless Court otherwise directs.**—(1) On a winding-up order being made in respect of a company, the Official Liquidator shall, by virtue of his office, become the liquidator of the company:

Provided that the Court may, when making the winding up order or at any time subsequently, for special reasons to be recorded in writing, appoint some other person or persons to be liquidator or liquidators of the company.

(2) The Official Liquidator shall, by virtue of his office, be the liquidator when the office of a liquidator or the offices of all the liquidators appointed under the proviso to sub-section (1) fall vacant, until a fresh appointment is made by the Court under that proviso.

**413. Appointment and powers of provisional liquidator.**—(1) At any time after the presentation of a winding-up petition and before the making of a winding-up order, the Court may appoint the Official Liquidator, or for special reasons to be recorded in writing, any other person to be liquidator provisionally.

(2) Before appointing a provisional liquidator, the Court shall give notice to the company and give a reasonable opportunity to it to make its representations, if any, unless, for special reasons to be recorded in writing, the Court thinks fit to dispense with such notice.

(3) Where a provisional liquidator is appointed by the Court, the Court may limit and restrict his powers by the order appointing him or by a subsequent order; but otherwise he shall have the same powers as a liquidator.

(4) A provisional liquidator shall cease to hold office as such on a winding up order being made.

**414. Liquidator other than Official Liquidator to give notice of appointment to Registrar and to give information etc. to Official Liquidator.**—Where in the winding up of a company by the Court, a person other than the Official Liquidator is appointed liquidator, that person—

- (a) shall not be capable of acting as liquidator until he has notified his appointment to the Registrar ; and
- (b) shall give the Official Liquidator such information and such access to and facilities for inspecting, the books and documents of the company, and generally such aid, as may be requisite for enabling the Official Liquidator to perform his duties under this Act.

**415. General provisions as to liquidators.**—(1) A liquidator appointed by the Court may resign or, on cause shown, be removed by the Court

(2) A vacancy in the office of a liquidator appointed by the Court may be filled by the Court.

(3) The liquidator or liquidators shall conduct the proceedings in winding up the company and perform such duties in reference thereto as the Court may impose.

(4) If two or more liquidators are appointed by the Court, the Court shall declare whether any act by this Act required or authorised to be done by the liquidator is to be done by all or any one or more of them.

(5) Where a person other than the Official Liquidator is appointed liquidator, he shall receive such salary or other remuneration, by way of percentage or otherwise, as the Court may fix ; and if two or more liquidators are appointed, their remuneration shall be distributed among them in such proportions as the Court directs.

(6) Where the Official Liquidator becomes or acts as liquidator, there shall be paid to the Central Government out of the assets of the company such fees as may be prescribed.

(7) Subject to the provisions of section 507, the acts of a liquidator shall be valid, notwithstanding any defect that may afterwards be discovered in his appointment or qualification:

Provided that nothing in this sub-section shall be deemed to give validity to acts done by a liquidator after his appointment has been shown to be invalid.

(8) The Court may determine whether any, and, if so, what, security is to be given by a liquidator on his appointment.

**416. Style etc. of liquidator.**—A liquidator shall be described where he is the Official Liquidator, by the style of “the Official Liquidator” and where he is not the Official Liquidator, by the style of “the liquidator”, of the particular company in respect of which he acts, or in respect of which he is appointed, as the case may be, and not by his individual name.

**417. Receiver not to be appointed of assets with liquidator.**—A receiver shall not be appointed of assets in the hands of a liquidator.

**418. Statement of affairs to be made to Official Liquidator.**—(1) Where the Court has made a winding-up order or appointed a provisional liquidator, there shall, unless the Court in its discretion otherwise orders, be made out and submitted to the Official Liquidator a statement as to the

affairs of the company in the prescribed form, verified by an affidavit, and containing the following particulars, namely :—

- (a) the assets of the company, stating separately the cash balance in hand and at the bank, if any ;
- (b) its debts and liabilities ;
- (c) the names, residences and occupations of its creditors, stating separately the amount of secured and unsecured debts, and in the case of secured debts, particulars of the securities given, their value and the dates on which they were given ;
- (d) the debts due to the company and the names, residences and occupations of the persons from whom they are due and the amount likely to be realised on account thereof ;
- (e) such further or other information as may be prescribed, or as the Official Liquidator may require.

(2) The statement shall be submitted and verified by one or more of the persons who are at the relevant date the directors and by the person who is at that date the manager, secretary or other chief officer of the company, or by such of the persons hereinafter in this sub-section mentioned, as the Official Liquidator, subject to the direction of the Court, may require to submit and verify the statement, that is to say, persons—

- (a) who are or have been officers of the company ;
- (b) who have taken part in the formation of the company at any time within one year before the relevant date ;
- (c) who are in the employment of the company, or have been in the employment of the company within the said year, and are in the opinion of the Official Liquidator capable of giving the information required ;
- (d) who are or have been within the said year officers of, or in the employment of, a company which is, or within the said year was, an officer of the company to which the statement relates.

(3) The statement shall be submitted within twenty-one days from the relevant date, or within such extended time as the Official Liquidator or the Court may, for special reasons, appoint.

(4) Any person making, or concurring in making, the statement and affidavit required by this section shall be allowed, and shall be paid by the Official Liquidator or provisional liquidator, as the case may be, out of the assets of the company, such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the Official Liquidator may consider reasonable, subject to an appeal to the Court.

(5) If any person, without reasonable excuse, makes default in complying with any of the requirements of this section, he shall be punishable with fine which may extend to one hundred rupees for every day during which the default continues.

(6) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled, by himself or by his agent, at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section, and to a copy thereof or extract therefrom.

(7) Any person truthfully so stating himself to be a creditor or contributory shall be guilty of an offence under section 182 of the Indian



Penal Code ( Act XLV of 1860 ), and shall, on the application of the Official Liquidator or provisional liquidator, be punishable accordingly.

(8) In this section, the expression " the relevant date " means, in a case where a provisional liquidator is appointed, the date of his appointment, and in a case where no such appointment is made, the date of the winding-up order.

**419. Report by Official Liquidator.**—(1) In a case where a winding up order is made, the Official Liquidator shall, as soon as practicable after receipt of the statement to be submitted under section 418, and not later than four, or with the leave of the Court, six months from the date of the order, or in a case where the Court orders that no statement shall be submitted, as soon as practicable after the date of the order, submit a preliminary report to the Court—

- (a) as to the amount of capital issued, subscribed, and paid up, and the estimated amount of assets and liabilities, giving separately, under the heading of assets, particulars of (i) cash and negotiable securities ; (ii) debts due from contributories; (iii) debts due to the company and securities, if any, available in respect thereof ; (iv) movable and immovable properties belonging to the company; and (v) unpaid calls ; and
- (b) if the company has failed, as to the causes of the failure; and
- (c) whether in his opinion further inquiry is desirable as to any matter relating to the promotion, formation, or failure of the company, or the conduct of the business thereof.

(2) The Official Liquidator may also, if he thinks fit, make a further report, or further reports, stating the manner in which the company was promoted or formed and whether in his opinion any fraud has been committed by any person in its promotion or formation, or by any officer of the company in relation to the company since the formation thereof, and any other matters which, in his opinion, it is desirable to bring to the notice of the Court.

(3) If the Official Liquidator states in any such further report that in his opinion a fraud has been committed as aforesaid, the Court shall have the further powers provided in section 442.

**420. Custody of company's property.**—(1) Where a winding up order has been made or where a provisional liquidator has been appointed, the liquidator or the provisional liquidator, as the case may be, shall take into his custody or under his control, all the property, effects and actionable claims to which the company is or appears to be entitled.

(2) All the property and effects of the company shall be deemed to be in the custody of the Court as from the date of the order for the winding up of the company.

**421. Powers of liquidator.**—(1) The liquidator in a winding up by the Court shall have power, with the sanction of the Court,—

- (a) to institute or defend any suit, prosecution, or other legal proceeding, civil or criminal, in the name and on behalf of the company ;
- (b) to carry on the business of the company so far as may be necessary for the beneficial winding up of the company ;

- (c) to sell the immovable and movable property and actionable claims of the company by public auction or private contract, with power to transfer the whole thereof to any person or body corporate or to sell to the same in parcels ;
  - (d) to do all acts and to execute, in the name and on behalf of the company, all deeds, receipts, and other documents, and for that purpose to use, when necessary, the company's seal ;
  - (e) to prove, rank and claim in the insolvency of any contributory, for any balance against his estate, and to receive dividends in the insolvency, in respect of that balance as a separate debt due from the insolvent, and rateably with the other separate creditors ;
  - (f) to draw, accept, make and indorse any bill of exchange, hundi or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if the bill, hundi, or note had been drawn, accepted, made or indorsed by or on behalf of the company in the course of its business ;
  - (g) to raise on the security of the assets of the company any money requisite ;
  - (h) to take out, in his official name, letters of administration to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot be conveniently done in the name of the company, and in all such cases, the money due shall, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, be deemed to be due to the liquidator himself: Provided that nothing herein empowered shall be deemed to affect the rights, duties and privileges of any Administrator General ;
  - (i) to appoint an agent to do any business which the liquidator is unable to do himself ; and
  - (j) to do all such other things as may be necessary for winding up the affairs of the company and distributing its assets.
- (2) Any creditor or contributory may apply to the Court with respect any exercise or proposed exercise of any of the powers conferred by this section .

**422. Discretion of liquidator.**—The Court may, by order, provide that the liquidator may exercise any of the powers referred to in section 421 without the sanction or intervention of the Court:

Provided always that the exercise by the liquidator of such powers shall be subject to the control of the Court.

**423. Provision for legal assistance to liquidator.**—The liquidator may, with the sanction of the Court, appoint an advocate, attorney or pleader entitled to appear before the Court to assist him in the performance of his duties :

Provided that the liquidator shall not appoint his partner, unless the latter consents to act without remuneration.

**424. Exercise and control of liquidator's powers.**—(1) Subject to the provisions of this Act, the liquidator of a company which is being wound up by the Court shall, in the administration of the assets of the company and

the distribution thereof among its creditors, have regard to any directions which may be given by resolution of the creditors or contributories at any general meeting or by the committee of inspection.

(2) Any directions given by the creditors or contributories at any general meeting shall, in case of conflict, be deemed to override any directions given by the committee of inspection.

(3) The liquidator—

(a) may summon general meetings of the creditors or contributories, whenever he thinks fit, for the purpose of ascertaining their wishes;

(b) shall summon such meetings at such times as the creditors or contributories, as the case may be, may, by resolution, direct, or whenever requested in writing to do so by not less than one-tenth in value of the creditors or contributories, as the case may be.

(4) The liquidator may apply to the Court in the manner prescribed, for directions in relation to any particular matter arising in the winding up.

(5) Subject to the provisions of this Act, the liquidator shall use his own discretion in the administration of the assets of the company and in the distribution thereof among the creditors.

(6) Any person aggrieved by any act or decision of the liquidator may apply to the Court, and the Court may confirm, reverse or modify the act or decision complained of, and make such further order as it thinks just in the circumstances.

**425. Books to be kept by liquidator.**—(1) The liquidator of a company which is being wound up by the Court shall keep, in the manner prescribed, proper books in which he shall cause entries or minutes to be made of proceedings at meetings and of such other matters as may be prescribed.

(2) Any creditor or contributory may, subject to the control of the Court, personally or by his agent, inspect any such books.

**426. Audit of liquidator's accounts.**—(1) The liquidator of a company which is being wound up by the Court shall, at such times as may be prescribed but not less than twice in each year during his tenure of office, present to the Court an account of his receipts and payments as liquidator.

(2) The account shall be in the prescribed form, shall be made in duplicate, and shall be verified by a declaration in the prescribed form.

(3) The Court shall cause the account to be audited in such manner as it thinks fit; and for the purpose of the audit, the liquidator shall furnish the Court with such vouchers and information as the Court may require, and the Court may, at any time, require the production of, and inspect, any books or accounts kept by the liquidator.

(4) When the account has been audited, one copy thereof shall be filed and kept by the Court, and the other copy shall be delivered to the Registrar for filing; and each copy shall be open to the inspection of any creditor, contributory or any person interested.

(5) The liquidator shall cause the account when audited or a summary thereof to be printed, and shall send a printed copy of the account or summary by post to every creditor and to every contributory:

Provided that the Court may in any case dispense with compliance with this sub-section.

**427. Meetings of creditors and contributories to determine appointment and composition of committee of inspection.**—(1) The liquidator shall, within one month from the date of the order for the winding-up of a company, convene a meeting of its creditors (as ascertained from its books and documents) for the purpose of determining whether or not a committee of inspection shall be appointed to act with the liquidator, and who are to be members of the committee, if one is appointed.

(2) The liquidator shall, within one week from the date of the creditors meeting or such further time as the Court, in its discretion, may grant for the purpose, convene a meeting of the contributories to consider the decision of the creditors' meeting and to express the views of the contributories on the matters specified in sub-section (1); and it shall be open to the meeting to accept the decision of the creditors' meeting, with or without modifications or to reject it.

(3) Except in the case where the meeting of the contributories accepts the decision of the creditors' meeting in its entirety, it shall be the duty of the liquidator to apply to the Court for directions as to whether there shall be a committee of inspection; and, if so, what the composition of the committee shall be, and who shall be members thereof.

**428. Constitution and proceedings of committee of inspection.**—(1) A committee of inspection appointed in pursuance of section 427 shall consist of not more than twelve members, being creditors and contributories of the company or persons holding general or special powers of attorney from creditors or contributories, in such proportions as may be agreed on by the meetings of creditors and contributories, or in case of difference of opinion between the meetings, as, may be determined by the Court.

(2) The committee of inspection shall have the right to inspect the accounts of the liquidator at all reasonable times.

(3) The committee shall meet at such times as they may from time to time appoint, and, failing such appointment, at least once a month, and the liquidator or any member of the committee may also call a meeting of the committee as and when he thinks necessary.

(4) The committee may act by a majority of their members present at a meeting, but shall not act unless a majority of the committee are present.

(5) A member of the committee may resign by notice in writing signed by him and delivered to the liquidator.

(6) If a member of the committee is adjudged an insolvent or compounds or arranges with his creditors, or is absent from five consecutive meetings of the committee without the leave of those members who, together with himself, represent the creditors or contributories, as the case may be, his office shall thereupon become vacant.

(7) A member of the committee may be removed by an ordinary resolution at a meeting, of creditors if he represents creditors, or of contributories if he represents contributories, of which seven days' notice has been given, stating the object of the meeting.

(8) On a vacancy occurring in the committee, the liquidator shall forthwith summon a meeting of creditors or of contributories, as the case may require, to fill the vacancy, and the meeting may, by resolution, re-appoint the same, or appoint another, creditor or contributory to fill the vacancy:

Provided that if the liquidator, having regard to the position in the winding up, is of the opinion that it is unnecessary for the vacancy to be filled, he

may apply to the Court and the Court may make an order that the vacancy shall not be filled, or shall not be filled except in such circumstances as may be specified in the order.

(9) The continuing members of the committee, if not less than two, may act notwithstanding any vacancy in the committee.

*General powers of Court in case of winding up by Court*

**429. Power of Court to stay winding up.**—(1) The Court may at any time after an order for winding up has been made, on the application either of the Official Liquidator or of the liquidator or of any creditor or contributory, and on proof to the satisfaction of the Court that all proceedings in relation to the winding up ought to be stayed, make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the Court thinks fit.

(2) On any application under this section, the Court may, before making an order, require the Official Liquidator to furnish to the Court a report with respect to any facts or matters which are in his opinion relevant to the application.

(3) A copy of every order made under this section shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the Registrar, who shall make a minute of the order in his books relating to the company.

**430. Settlement of list of contributories and application of assets.**

(1) As soon as may be after making a winding up order, the Court shall settle a list of contributories, with power to rectify the register of members in all cases where rectification is required in pursuance of this Act, and shall cause the assets of the company to be collected and applied in discharge of its liabilities:

Provided that, where it appears to the Court that it will not be necessary to make calls on or adjust the rights of contributories, the Court may dispense with the settlement of a list of contributories.

(2) In settling the list of contributories, the Court shall distinguish between those who are contributories in their own right and those who are contributories as being representatives of, or liable for the debts of, others.

**431. Delivery of property to liquidator.**—The Court may, at any time after making a winding-up order, require any contributory for the time being on the list of contributories and any trustee, receiver, banker, agent, or officer of the company, to pay, deliver, surrender or transfer forthwith, or within such time as the Court directs, to the liquidator, any money, property or books and papers in his hands to which the company is *prima facie* entitled.

**432. Payment of debts due by contributory and extent of set-off.**—

(1) The Court may, at any time after making a winding up order, make an order on any contributory for the time being on the list of contributories to pay, in the manner directed by the order, any money due to the company, from him or from the estate of the person whom he represents, exclusive of any money payable by him or the estate by virtue of any call in pursuance of his Act.

(2) The Court, in making such an order, may—

(a) in the case of an unlimited company, allow to the contributory by way of set-off any money due to him or to the estate which he

represents from the company on any independent dealing or contract with the company, but not any money due to him as a member of the company in respect of any dividend or profit ; and

(b) in the case of a limited company, make to any director, managing agent or manager whose liability is unlimited or to his estate, the like allowance.

(3) In the case of any company, whether limited or unlimited, when all the creditors are paid in full, any money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call.

**433. Power of Court to make calls.**—(1) The Court may, at any time after making a winding up order, and either before or after it has ascertained the sufficiency of the assets of the company,—

(a) make calls on all or any of the contributories for the time being on the list of the contributories, to the extent of their liability, for payment of any money which the Court considers necessary to satisfy the debts and liabilities of the company, and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, and

(b) make an order for payment of any calls so made.

(2) In making a call, the Court may take into consideration the probability that some of the contributories may, partly or wholly, fail to pay the call.

**434. Proceedings for recovery of calls to be summary.**—All proceedings for the recovery of any money due from a contributory under a call made on him, whether by the company before the making of the winding up order or by the Court in pursuance of section 433, shall be of a summary character.

**435. Payment into bank of moneys due to company.**—(1) The Court may order any contributory, purchaser or other person from whom any money is due to the company to pay the money into the account of the liquidator in any Scheduled Bank instead of to the liquidator.

(2) Any such order may be enforced in the same manner as if the Court had directed payment to the liquidator.

**436. Moneys and securities paid into Bank to be subject to order of Court.**—All moneys, bills, hundis, notes and other securities paid or delivered into the Bank where the liquidator of the company may have his account, in the event of a company being wound up by the Court, shall be subject in all respects to the orders of the Court.

**437. Order on contributory to be conclusive evidence.**—(1) An order made by the Court on a contributory shall, subject to any right of appeal, be conclusive evidence that the money, if any, thereby appearing to be due or ordered to be paid is due.

(2) All other pertinent matters stated in the order shall be taken to be truly stated as against all persons and in all proceedings whatsoever.

**438. Power to exclude creditors not proving in time.**—The Court may fix a time or times within which creditors are to prove their debts or claims, or to be excluded from the benefit of any distribution made before those debts or claims are proved.

**439. Adjustment of rights of contributories.**—The Court shall adjust the rights of the contributories among themselves, and distribute any surplus among the persons entitled thereto.

**440. Power to order costs.**—The Court may, in the event of the assets being insufficient to satisfy the liabilities, make an order for the payment, out of the assets, of the costs, charges and expenses incurred in the winding up, in such order of priority as the Court thinks just.

**441. Power to summon persons suspected of having property of company, etc.**—(1) The Court may, at any time after the appointment of its provisional liquidator or the making of a winding up order, summon before any officer of the company or person known or suspected to have in his possession any property of the company or known or supposed to be indebted to the company, or any person whom the Court deems capable of giving information concerning the promotion, formation, trade, dealings, property or affairs of the company.

(2) The Court may examine any officer or person so summoned on oath concerning the matters aforesaid, either by word of mouth or on written interrogatories; and may in the former case reduce his answers to writing and require him to sign them.

(3) The Court may require any officer or person so summoned to produce any books and papers in his custody or power relating to the company but, where he claims any lien on documents produced by him, the production shall be without prejudice to that lien, and the Court shall have jurisdiction in the winding up to determine all questions relating to that lien.

(4) If any officer or person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the Court at the time appointed, not having a lawful impediment (made known to the Court at the time of its sitting and allowed by it), the Court may cause him to be apprehended and brought before the Court for examination.

**442. Power to order public examination of promoters, directors etc.**—(1) When an order has been made for winding up a company by the Court, and the Official Liquidator has made a report to the Court under this Act, stating that in his opinion a fraud has been committed by any person in the promotion or formation of the company or by any officer of the company in relation to the company since its formation, the Court may, after considering the report, direct that that person or officer shall attend before the Court on a day appointed by it for that purpose, and be publicly examined as to the promotion or formation or the conduct of the business of the company, or as to his conduct and dealings as officer thereof.

(2) The Official Liquidator shall take part in the examination, and for that purpose may, if specially authorised by the Court in that behalf, employ such legal assistance as may be sanctioned by the Court.

(3) The liquidator, where the Official Liquidator is not the liquidator, and any creditor or contributory, may also take part in the examination either personally or by any advocate, attorney or pleader entitled to appear before the Court.

(4) The Court may put such questions to the person examined as it thinks fit.

(5) The person examined shall be examined on oath, and shall answer all such questions as the Court may put or allow to be put to him.

(6) A person ordered to be examined under this section—

(a) shall, before his examination, be furnished with a copy of the Official Liquidator's report if such person pays the cost thereof ; and

(b) may at his own cost employ an advocate, attorney or pleader entitled to appear before the Court, who shall be at liberty to put to him such questions as the Court may deem just for the purpose of enabling him to explain or qualify any answers given by him.

(7) (a) If any such person applies to the Court to be exculpated from any charges made or suggested against him, it shall be the duty of the Official Liquidator to appear on the hearing of the application and call the attention of the Court to any matters which appear to the Official Liquidator to be relevant.

(b) If the Court, after hearing any evidence given or witnesses called by the Official Liquidator, grants the application, the Court may allow the applicant such costs as it may think fit.

(8) Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him (in civil proceedings), and shall be open to the inspection of any creditor or contributory at all reasonable times.

(9) The Court may, if it thinks fit, adjourn the examination from time to time.

(10) An examination under this section may, if the Court so directs and subject to any rules made in this behalf, be held before any District Judge or before any officer of the High Court, being an Official Referee, Master, Registrar or Deputy Registrar.

(11) The powers of the Court under this section as to the conduct of the examination, but not as to costs, may be exercised by the Judge or officer before whom the examination is held in pursuance of sub-section (10)

**443. Power to arrest absconding contributory.**—At any time either before or after making a winding up order, the Court may, on proof of probable cause for believing that a contributory is about to quit India or otherwise to abscond, or to remove or conceal any of his property, for the purpose of evading payment of calls or of avoiding examination respecting the affairs of the company, cause—

(a) the contributory to be arrested and safely kept until such time as the Court may order ; and

(b) his books and papers and movable property to be seized and safely kept until such time as the Court may order.

**444. Saving of existing powers of Court.**—Any powers conferred on the Court by this Act shall be in addition to, and not in restriction of, any existing powers of instituting proceedings against any contributory or debtor of the company, or the estate of any contributory or debtor, for the recovery of any call or other sums.

**445. Dissolution of company.**—(1) When the affairs of a company have been completely wound up, the Court shall make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly.



(2) A copy of the order shall, within fourteen days from the date thereof be forwarded by the liquidator to the Registrar who shall make in his books minute of the dissolution of the company.

(3) If the liquidator makes default in forwarding a copy as aforesaid, he shall be punishable with fine which may extend to fifty rupees for every day during which the default continues.

*Enforcement of and Appeal from Orders*

**446. Power to enforce orders.**—Any order made by a Court under this Act may be enforced in the same manner as a decree made by the Court in a suit pending therein.

**447. Order made in any Court to be enforced by other Courts.**—Any order made by a Court for or in the course of winding up a company shall be enforceable in any place in India other than that over which such Court has jurisdiction, by the Court which would have had jurisdiction in respect of the company if its registered office had been situate at such other place, and in the same manner in all respects as if the order had been made by that Court.

**448. Mode of dealing with orders to be enforced by other Courts.**—  
(1) Where any order made by one Court is required to be enforced by another Court, a certified copy of the order shall be produced to the proper officer of the Court required to enforce the order.

(2) The production of such certified copy shall be sufficient evidence of the order.

(3) Upon the production of such certified copy, the Court shall take the requisite steps for enforcing the order, in the same manner as if it had been made by itself.

**449. Appeals from orders.**—Appeals from any order or decision made or given in the matter of the winding up of a company by the Court shall lie to the same Court to which, in the same manner in which, and subject to the same conditions under which, appeals lie from any order or decision of the Court in cases within its ordinary jurisdiction.

(iii) VOLUNTARY WINDING UP

*Resolutions for, and commencement of, voluntary winding up*

**450. Circumstances in which company may be wound up voluntarily.**—(1) A company may be wound up voluntarily—

- (a) when the period, if any, fixed for the duration of the company by the articles has expired, or the event, if any, has occurred, on the occurrence of which the articles provide that the company is to be dissolved, and the company in general meeting passes a resolution requiring the company to be wound up voluntarily ;
- (b) if the company passes a special resolution that the company be wound up voluntarily ;
- (c) if the company passes a special resolution declaring that the company cannot by reason of its liabilities continue its business, and that it is advisable to wind up.

(2) In this Act, the expression “a resolution for voluntarily winding up” means a resolution passed under any of the clauses of sub-section (1).

**451. Notice of resolution to wind up voluntarily.**—(1) When a company has passed a resolution for voluntary winding up, it shall, within fourteen days of the passing of the resolution, give notice of the resolution by advertisement in the Official Gazette, and also in some newspaper circulating in the district where the registered office of the company is situate.

(2) If default is made in complying with sub-section (1), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty rupees for every day during which the default continues.

For the purposes of this sub-section, a liquidator of the company shall be deemed to be an officer of the company.

**452. Commencement of voluntary winding up.**—A voluntary winding up shall be deemed to commence at the time of the passing of the resolution for voluntary winding up.

#### *Consequences of voluntary winding up*

**453. Effect of voluntary winding up on status of company.**—In the case of a voluntary winding up, the company shall, from the commencement of the winding up, cease to carry on its business, except so far as may be required for the beneficial winding up thereof :

Provided that the corporate state and corporate powers of the company shall continue until it is dissolved.

#### *Declaration of solvency*

**454. Declaration of solvency in case of proposal to wind up voluntarily.** (1) Where it is proposed to wind up a company voluntarily, the directors of the company, or in the case of a company having more than two directors, the majority of the directors, may, at a meeting of the directors, make a declaration verified by an affidavit, to the effect that they have made a full inquiry into the affairs of the company, and that, having done so, they have formed the opinion that the company will be able to pay its debts in full within such period not exceeding three years from the commencement of the winding up as may be specified in the declaration.

(2) A declaration made as aforesaid shall have no effect for the purposes of this Act, unless—

- (a) it is made within the five weeks immediately preceding the date of the passing of the resolution for winding up the company and is delivered to the Registrar for registration before that date ; and
- (b) it embodies a statement of the company's assets and liabilities as at the latest practicable date before the making of the declaration.

(3) Any director of a company making a declaration under this section without having reasonable grounds for the opinion that the company will be able to pay its debts in full within the period specified in the declaration, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

If the company is wound up in pursuance of a resolution passed within the period of five weeks after the making of the declaration, but its debts are not paid or provided for in full within the period specified in the declaration, it shall be presumed, until the contrary is shown, that the director did not have reasonable grounds for his opinion.

(4) A winding up in the case of which a declaration has been made and delivered in accordance with this section or section 207 of the Indian Companies Act, 1913 (VII of 1913) is in this Act referred to as "a members' voluntary winding up" and a winding up in the case of which a declaration has not been made and delivered as aforesaid is in this Act referred to as "a creditors' voluntary winding up."

(5) Sub-sections (1) to (3) shall not apply to a winding up commenced before the commencement of this Act.

*Provisions applicable to a member's voluntary winding up.*

**455. Provisions applicable to a member's voluntary winding up.**—The provisions contained in sections 456 to 464 both inclusive, shall, subject to the provisions of section 464 apply in relation to a member's voluntary winding up.

**456. Power of company to appoint and fix remuneration of liquidators.**—(1) The company in general meeting shall—

- (a) appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the company ; and
- (b) fix the remuneration, if any, to be paid to the liquidator or liquidators, before the liquidator or any of the liquidators, as the case may be, takes charge of his office.

(2) Any remuneration so fixed shall not be increased in any circumstances whatever, whether with or without the sanction of the Court.

**457. Directors' powers to cease on appointment of liquidator.**—On the appointment of a liquidator, all the powers of the directors shall cease, except so far as the company in general meeting or the liquidator may sanction the continuance thereof.

**458. Power to fill vacancy in office of liquidator.**—(1) If a vacancy occurs by death, resignation or otherwise in the office of any liquidator appointed by the company, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy.

(2) For that purpose, a general meeting may be convened by any contributory or, by the continuing liquidator or liquidators.

(3) The meeting shall be held in the manner provided by this Act or by the articles, or in such other manner as the Court may, on application by any contributory or by the continuing liquidator or liquidators, determine.

**459. Notice of appointment of liquidator to be given to Registrar.**—(1) The company shall give notice to the Registrar of the appointment of a liquidator or liquidators made by it under section 456, of every vacancy occurring in the office of liquidator, and of the name of the liquidator or liquidators appointed to fill every such vacancy under section 458.

(2) The notice aforesaid shall be given by the company within ten days of the event to which it relates.

(3) If default is made in complying with sub-section (1) or (2), the company, and every officer of the company (including every continuing liquidator) who is in default, shall be punishable with fine which may extend to one hundred rupees for every day during which the default continues.

**460. Power of liquidator to accept shares, etc., as consideration for sale of property of company.**—(1) Where—

- (a) a company is proposed to be, or is in course of being, wound up altogether voluntarily ; and
- (b) the whole or any part of its business or property is proposed to be transferred or sold to another company, whether a company within the meaning of this Act or not (in this section called “the transferee company”),

the liquidator of the first-mentioned company (in this section called “the transferor company”) may, with the sanction of a special resolution of that company conferring on the liquidator either a general authority or an authority in respect of any particular arrangement,—

- (i) receive, in compensation or part compensation for the transfer or sale, shares, policies, or other like interests in the transferee company, for distribution among the members of the transferor company ; or
- (ii) enter into any other arrangement whereby the members of the transferor company may, in lieu of receiving cash, shares, policies, or other like interests or in addition thereto, participate in the profits of, or receive any other benefit from, the transferee company.

(2) Any sale or arrangement in pursuance of this section shall be binding on the members of the transferor company.

(3) If any member of the transferor company who did not vote in favour of the special resolution expresses his dissent therefrom in writing addressed to the liquidator, and left at the registered office of the company within seven days after the passing of the resolution, he may require the liquidator either—

- (a) to abstain from carrying the resolution into effect ; or
- (b) to purchase his interest at a price to be determined by agreement or by arbitration in the manner provided by this section.

(4) If the liquidator elects to purchase the member's interest, the purchase money shall be paid before the company is dissolved, and be raised by the liquidator in such manner as may be determined by special resolution.

(5) A special resolution shall not be invalid for the purposes of this section by reason only that it is passed before or concurrently with a resolution for voluntary winding up or for appointing liquidators; but if an order is made within a year for winding up the company by or subject to the supervision of the Court, the special resolution shall not be valid unless sanctioned by the Court.

(6) The provisions of the Arbitration Act, 1940 (X of 1940), other than those restricting the application of that Act in respect of the subject matter of the arbitration, shall apply to all arbitrations in pursuance of this section.

**461. Duty of liquidator to call creditors' meeting in case of insolvency.**—(1) If, in the case of a winding up commenced after the commencement of this Act, the liquidator is at any time of opinion that the company will not be able to pay its debts in full within the period stated in the declaration under section 454, he shall forthwith summon a meeting of the creditors and shall lay before the meeting a statement of the assets and liabilities of the company.

(2) If the liquidator fails to comply with sub-section (1), he shall be punishable with fine which may extend to five hundred rupees.

**462. Duty of liquidator to call general meeting at end of each year.**—(1) Subject to the provisions of section 454, in the event of the winding up continuing for more than one year, the liquidator shall—

- (a) call a general meeting of the company at the end of the first year from the commencement of the winding up and at the end of each succeeding year, or as soon thereafter as may be convenient within three months from the end of the year or such longer period as the Central Government may allow ; and
- (b) lay before the meeting an account of his acts and dealings and of the conduct of the winding up during the preceding year, together with a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in and position of the liquidation.

(2) If the liquidator fails to comply with sub-section (1), he shall be punishable, in respect of each failure, with fine which may extend to one hundred rupees.

**463. Final meeting and dissolution.**—(1) Subject to the provisions of section 464, as soon as the affairs of the company are fully wound up, the liquidator shall—

- (a) make up an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of ; and
  - (b) call a general meeting of the company for the purpose of laying the account before it, and giving any explanation thereof.
- (2) The meeting shall be called by advertisement—
- (a) specifying the time, place and object thereof ; and
  - (b) published not less than one month before the meeting in the Official Gazette, and also in some newspaper circulating in the district where the registered office of the company is situate.

(3) Within one week after the meeting, the liquidator shall send to the Registrar a copy of the account, and shall make a return to him of the holding of the meeting and of its date.

If the copy is not so sent or the return is not so made, the liquidator shall be punishable with fine which may extend to fifty rupees for every day during which the default continues.

(4) If a quorum is not present at the meeting aforesaid, the liquidator shall, in lieu of the return referred to in sub-section (3), make a return that the meeting was duly called and that no quorum was present thereat.

Upon such a return being made within one week after the date of the meeting, the provisions of sub-section (3) as to the making of the return shall be deemed to have been complied with.

(5) The Registrar, on receiving the account and either the return mentioned in sub-section (3) or the return mentioned in sub-section (4), shall forthwith register them and on the expiration of three months from their registration, the company shall be deemed to be dissolved:

Provided that the Court may, on the application of the liquidator or of any other person who appears to the Court to be interested, make an order deferring the date at which the dissolution of the company is to take effect, for such time as the Court thinks fit.

(6) It shall be the duty of the person on whose application an order of the Court under this section is made, within twenty-one days after the making of the order, to deliver to the Registrar a certified copy of the order for registration, and if that person fails so to do, he shall be punishable with fine which may extend to fifty rupees for every day during which the default continues.

(7) If the liquidator fails to call a general meeting of the company as required by this section, he shall be punishable with fine which may extend to five hundred rupees.

**464. Alternative provisions as to annual and final meetings in case of insolvency.**—Where section 461 has effect, sections 474 and 475 shall apply to the winding up, to the exclusion of sections 462 and 463, as if the winding up were a creditors' voluntary winding up and not a members' voluntary winding up :

Provided that the liquidator shall not be required to call a meeting of creditors under section 474 at the end of the first year from the commencement of the winding up, unless the meeting held under section 461 is held more than three months before the end of that year.

*Provisions applicable to a creditors' voluntary winding up*

**465. Provisions applicable to a creditors' voluntary winding up.**—The provisions contained in sections 466 to 475, both inclusive, shall apply in relation to a creditors' voluntary winding up.

**466. Meeting of creditors.**—(1) The company shall cause a meeting of the creditors of the company to be called for the day, or the day next following the day, on which there is to be held the meeting at which the resolution for voluntary winding up is to be proposed, and shall cause the notices of the said meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of the said meeting of the company.

(2) The company shall cause notice of the meeting of the creditors to be advertised once at least in the Official Gazette and once at least in two newspapers circulating in the district where the registered office or principal place of business of the company is situate.

(3) The directors of the company shall—

(a) cause a full statement of the position of the company's affairs together with a list of the creditors of the company and the estimated amount of their claims to be laid before the meeting of creditors to be held as aforesaid ; and

(b) appoint one of their number to preside at the said meeting.

(4) It shall be the duty of the director appointed to preside at the meeting of creditors to attend the meeting and preside thereat.

(5) If the meeting of the company at which the resolution for voluntary winding up is to be proposed is adjourned and the resolution is passed

at an adjourned meeting, any resolution passed at the meeting of the creditors held in pursuance of sub-section (1) shall have effect as if it had been passed immediately after the passing of the resolution for winding up the company.

(6) If default is made—

- (a) by the company, in complying with sub-sections (1) and (2) ;
- (b) by the directors of the company, in complying with sub-section (3) ;
- (c) by any director of the company, in complying with sub-section (4) ;

the company, each of the directors, or the director, as the case may be, shall be punishable with fine which may extend to one thousand rupees and, in the case of default by the company, every officer of the company who is in default, shall be liable to the like punishment.

**467. Notice of resolutions passed by creditors' meeting to be given to Registrar.**—(1) Notice of any resolution passed at a creditors' meeting in pursuance of section 464 shall be given by the company to the Registrar, within ten days of the passing thereof.

(2) If default is made in complying with sub-section (1), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty rupees for every day during which the default continues.

For the purposes of this section, a liquidator of the company shall be deemed to be an officer of the company.

**468. Appointment of liquidator.**—(1) The creditors and the company at their respective meetings mentioned in section 466 may nominate a person to be liquidator for the purpose of winding up the affairs and distributing the assets of the company.

(2) If the creditors and the company nominate different persons, the person nominated by the creditors shall be liquidator :

Provided that any director, member or creditor of the company may, within seven days after the date on which the nomination was made by the creditors, apply to the Court for an order either directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors, or appointing the Official Liquidator or some other person to be liquidator instead of the person appointed by the creditors.

(3) If no person is nominated by the creditors, the person, if any, nominated by the company shall be liquidator.

(4) If no person is nominated by the company, the person, if any, nominated by the creditors shall be liquidator.

**469. Appointment of committee of inspection.**—(1) The creditors at the meeting to be held in pursuance of section 464 or at any subsequent meeting may, if they think fit, appoint a committee of inspection consisting of not more than five persons.

(2) If such a committee is appointed, the company may, either at the meeting at which the resolution for voluntary winding up is passed or at any time subsequently in general meeting, appoint such number of persons (not exceeding five) as they think fit to act as members of the committee :

Provided that the creditors may, if they think fit, resolve that all or any of the persons so appointed by the company ought not to be members of the committee of inspection.

(3) If the creditors so resolve, the persons mentioned in the resolution shall not, unless the Court otherwise directs, be qualified to act as members of the committee.

(4) On any application to the Court for a direction under sub-section (3), the Court may, if it thinks fit, appoint other persons to act as members of the committee of inspection in the place of the persons mentioned in the creditors' resolution.

(5) Subject to the provisions of sub-sections (1) to (4) and to such rules as may be made by the Central Government, the provisions of section 428 (except sub-section (1) thereof) shall apply with respect to a committee of inspection appointed under this section as they apply with respect to a committee of inspection appointed in a winding up by the Court.

**470. Fixing of liquidators' remuneration.**—(1) The committee of inspection, or if there is no such committee, the creditors, may fix the remuneration to be paid to the liquidator or liquidators.

(2) Where the remuneration is not so fixed, it shall be determined by the Court.

(3) Any remuneration fixed under sub-section (1) or (2) shall not be increased in any circumstances whatever.

**471. Directors' powers to cease on appointment of liquidator.**—On the appointment of a liquidator, all the powers of the directors shall cease, except so far as the committee of inspection, or if there is no such committee, the creditors, may sanction the continuance thereof.

**472. Power to fill vacancy in office of liquidator.**—If a vacancy occurs by death, resignation or otherwise, in the office of a liquidator (other than a liquidator appointed by, or by the direction of, the Court), the creditors may fill the vacancy.

**473. Application of section 460 to a creditors' voluntary winding up.**—The provisions of section 460 shall apply in the case of a creditors' voluntary winding up as in the case of a members' voluntary winding up, with the modification that the powers of the liquidator under that section shall not be exercised except with the sanction either of the Court or of the committee of inspection.

**474. Duty of liquidator to call meetings of company and of creditors at end of each year.**—(1) In the event of the winding up continuing for more than one year, the liquidator shall—

- (a) call a general meeting of the company and a meeting of the creditors at the end of the first year from the commencement of the winding up and at the end of each succeeding year, or as soon thereafter as may be convenient within three months from the end of the year or such longer period as the Central Government may allow, and



- (b) lay before the meetings an account of his acts and dealings and of the conduct of the winding up during the preceding year together with a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in and position of the winding up.

(2) If the liquidator fails to comply with sub-section (1), he shall be punishable with fine which may extend to one hundred rupees.

**475. Final meeting and dissolution.**—(1) As soon as the affairs of the company are fully wound up, the liquidator shall—

- (a) make up an account of the winding up showing how the winding up has been conducted and the property of the company has been disposed of, and
- (b) call a general meeting of the company and a meeting of the creditors for the purpose of laying the account before the meetings and giving any explanation thereof.

(2) Each such meeting shall be called by advertisement—

- (a) specifying the time, place and object thereof ; and
- (b) published not less than one month before the meeting in the Official Gazette and also in some newspaper circulating in the district where the registered office of the company is situate.

(3) Within one week after the date of the meetings, or, if the meetings are not held on the same date, after the date of the later meeting, the liquidator shall send to the Registrar a copy of the account, and shall make a return to him of the holding of the meetings and of the date or dates on which they were held.

If the copy is not so sent or the return is not so made, the liquidator shall be punishable with fine which may extend to fifty rupees for every day during which the default continues.

(4) If a quorum (which for the purposes of this section shall be two persons) is not present at either of such meetings, the liquidator shall, in lieu of the return referred to in sub-section (3), make a return that the meeting was duly called and that no quorum was present thereat.

Upon such a return being made within one week after the date fixed for the meeting, the provisions of sub-section (3) as to the making of the return shall, in respect of that meeting, be deemed to have been complied with.

(5) The Registrar, on receiving the account and also in respect of each such meeting either the return mentioned in sub-section (3) or the return mentioned in sub-section (4), shall forthwith register them, and on the expiration of three months from their registration, the company shall be deemed to be dissolved :

Provided that the Court may, on the application of the liquidator or of any other person who appears to the Court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the Court thinks fit.

(6) It shall be the duty of the person on whose application an order is made, by the Court under this section within ten days after the making

of the order, to deliver to the Registrar a certified copy of the order for registration, and if that person fails so to do, he shall be punishable with fine which may extend to five hundred rupees for every day during which the default continues.

(7) If the liquidator fails to call a general meeting of the company or a meeting of the creditors as required by this section, he shall be punishable, in respect of each such failure, with fine which may extend to five hundred rupees.

*Provisions applicable to every voluntary winding up*

**476. Provisions applicable to every voluntary winding up.**—The provisions contained in sections 477 to 484, both inclusive, shall apply to every voluntary winding up, whether a members' or a creditors' winding up.

**477. Distribution of property of company.**—Subject to the provisions of this Act as to preferential payments, the property of a company shall, on its winding up, be applied in satisfaction of its liabilities *pari passu* and, subject to such application, shall, unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company.

**478. Powers and duties of liquidator in voluntary winding up.**—  
(1) The liquidator may—

- (a) in the case of a members' voluntary winding up, with the sanction of a special resolution of the company, and in the case of a creditors' voluntary winding up, with the sanction of the Court, of the committee of inspection, or if there is no such committee, of a meeting of the creditors, exercise any of the powers given by clauses (d), (e), (f) and (h) of sub-section (1) of section 421 to a liquidator in a winding up by the Court ;
- (b) without the sanction referred to in clause (a), exercise any of the other powers given by this Act to the liquidator in a winding up by the Court ;
- (c) exercise the power of the Court under this Act of settling a list of contributories (which shall be *prima facie* evidence of the liability of the persons named therein to be contributories) ;
- (d) exercise the power of the Court of making calls ;
- (e) call general meetings of the company for the purpose of obtaining the sanction of the company by ordinary or special resolution, as the case may require, or for any other purpose he may think fit.

(2) The exercise by the liquidator of the powers given by clause (a) of sub-section (1) shall be subject to the control of the Court; and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of any of those powers.

(3) The liquidator shall pay the debt of the company and shall adjust the rights of the contributories among themselves.

(4) When several liquidators are appointed, any power given by this Act may be exercised by such one or more of them as may be determined at the time of their appointment, or, in default of such determination, by any two or more of them.

**479. Power of Court to appoint and remove liquidator in voluntary winding up.**—(1) If from any cause whatever, there is no liquidator acting, the Court may appoint a liquidator.

(2) The Court may, on cause shown, remove a liquidator and appoint another liquidator.

**480. Notice by liquidator of his appointment.**—(1) The liquidator shall within twenty-one days after his appointment, publish in the Official Gazette, and deliver to the Registrar for registration, a notice of his appointment in the form prescribed.

(2) If the liquidator fails to comply with the requirements of sub-section (1), he shall be punishable with fine which may extend to fifty rupees for every day during which the default continues.

**481. Arrangement when binding on company and creditors.**—(1) Any arrangement entered into between a company about to be, or in the course of being, wound up and its creditors shall, subject to the right of appeal under this section, be binding on the company if sanctioned by a special resolution, and on the creditors if acceded to by three-fourths in number and value of the creditors.

(2) Any creditor or contributory may, within three weeks from the completion of the arrangement, appeal to the Court against it, and the Court may thereupon, as it thinks just, amend, vary, confirm or set aside the arrangement.

**482. Power to apply to Court to have questions determined or powers exercised.**—(1) The liquidator or any contributory or creditor may apply to the Court—

(a) to determine any question arising in the winding up of a company or

(b) to exercise, as respects the enforcing of calls, the staying of proceedings or any other matter, all or any of the powers which the Court might exercise if the company were being wound up by the Court.

(2) The liquidator or any creditor or contributory may apply to the Court specified in sub-section (3) for an order setting aside any attachment, distress or execution put into force against the estate or effects of the company after the commencement of the winding up.

(3) An application under sub-section (2) shall be made—

(a) if the attachment, distress or execution is levied or put into force by a High Court, to such High Court, and

(b) if the attachment, distress or execution is levied or put into force by any other Court, to the Court having jurisdiction to wind up the company.

(4) The Court, if satisfied on an application under sub-section (1) or (2) that the determination of the question or the required exercise of power or the order applied for will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as it thinks fit, or may make such other order on the application as it thinks just.

(5) A copy of an order staying the proceedings in the winding up, made by virtue of this section, shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the Registrar, who shall make a minute of the order in his books relating to the company.

**483. Costs of voluntary winding up.**—All costs, charges and expenses properly incurred in the winding up, including the remuneration of the liquidator, shall, subject to the rights of secured creditors, if any, be payable out of the assets of the company in priority to all other claims.

**484. Saving for rights of creditors and contributories.**—The winding up of a company shall not bar the right of any creditor or contributory to have it wound up by the Court, but in the case of an application by a contributory, the Court must be satisfied that the rights of the contributories will be prejudiced by a voluntary winding up.

(iv) WINDING UP SUBJECT TO SUPERVISION OF COURT

**485. Power to order winding up subject to supervision.**—When a company has passed a resolution for voluntary winding up, the Court may make an order that the voluntary winding up shall continue, but subject to such supervision of the Court, and with such liberty for creditors, contributories or others to apply to the Court, and generally on such terms and conditions, as the Court thinks just.

**486. Effect of petition for winding up subject to supervision.**—A petition for the continuance of a voluntary winding up subject to the supervision of the Court shall, for the purpose of giving jurisdiction to the Court over suits, be deemed to be a petition for winding up by the Court.

**487. Power of Court to appoint or remove liquidators.**—(1) Where an order is made for a winding up subject to supervision, the Court may, by that or any subsequent order, appoint any additional liquidator or liquidators.

(2) The Court may remove any liquidator so appointed or any liquidator continued under the supervision order, and fill any vacancy occasioned by the removal, or by death or resignation.

(3) A liquidator appointed by the Court under this section shall have the same powers, be subject to the same obligations, and in all respects stand in the same position, as if he had been duly appointed in accordance with the provisions of this Act with respect to the appointment of liquidators in a voluntary winding up.

**488. Effect of supervision order.**—(1) Where an order is made for a winding up subject to supervision, the liquidator may, subject to any restrictions imposed by the Court, exercise all his powers, without the sanction or intervention of the Court, in the same manner as if the company were being wound up altogether voluntarily.

(2) Except as provided in sub-section (1), and save for the purposes of section 442, any order made by the Court for a winding up subject to the supervision of the Court shall for all purposes, including the staying of suits and other proceedings, be deemed to be an order of the Court for winding up the company by the Court, and shall confer full authority on the Court to make calls or to enforce calls made by the liquidators, and to exercise all other powers which it might have exercised if an order had been made for winding up the company altogether by the Court.

(3) In the construction of the provisions whereby the Court is empowered to direct any act or thing to be done to or in favour of the liquidator, the expression "liquidator" shall be deemed to mean the liquidator conducting the winding up, subject to the supervision of the Court.

**489. Appointment in certain cases of voluntary liquidators to office of liquidators.**—Where an order has been made for winding up a company subject to supervision, and an order is afterwards made for winding up by the Court, the Court may, by the last-mentioned or any subsequent order, appoint any person or persons who are then liquidators, either provisionally or permanently, and either with or without any other person, to be liquidator or liquidators in the winding up by the Court.

(v) PROVISIONS APPLICABLE TO EVERY MADE OF WINDING UP

*Proof and ranking of claims*

**490. Debts of all descriptions to be admitted to proof.**—In every winding up (subject, in the case of insolvent companies, to the application in accordance with the provisions of this Act of the law of insolvency), all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made, so far as possible, of the value of such debts or claims as may be subject to any contingency, or sound only in damages, or for some other reason may not bear a certain value.

**491. Application of insolvency rules in winding up of insolvent companies.**—(1) In the winding up of an insolvent company, the same rules shall prevail and be observed with regard to—

- (a) the respective rights of secured and unsecured creditors ;
- (b) debts provable ; and
- (c) to the valuation of annuities and future and contingent liabilities ;

as are in force for the time being under the law of insolvency with respect to the estates of persons adjudged insolvent.

(2) All persons who in any such case would be entitled to prove for and receive dividends out of the assets of the company may come in under the winding up, and make such claims against the company as they respectively are entitled to by virtue of this section.

**492. Preferential payments.**—(1) In a winding up, there shall in priority to all other debts—

- (a) all revenues, taxes, cesses and rates, whether payable to the Central or a State Government or to a local authority, due from the company at the relevant date as defined in clause (c) of sub-section (8) and having become due and payable within the twelve months next before that date ;
- (b) all wages or salary (whether or not earned wholly or in part by way of commission) of any clerk or servant, in respect of services rendered to the company during the four months next before the relevant date, subject to the limit specified in sub-section (2) ;
- (c) all wages (whether payable for time or for piece work) of any workman or labourer, in respect of services rendered to the company during the four months next before the relevant date, subject to the limit specified in sub-section (2) ;

- (d) all accrued holiday remuneration becoming payable to any clerk, servant, workman or labourer (or in the case of his death to any other person in his right), on the termination of his employment before, or by the effect of, the winding-up order or resolution ;
- (e) unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, all amounts due, in respect of contributions payable during the twelve months next before the relevant date, by the company as the employer of any persons under the Employees' State Insurance Act, 1948 (XXXIV of 1948), or any other law for the time being in force ;
- (f) unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, or unless the company has, at the commencement of the winding up, under such a contract with insurers as is mentioned in section 14 of the Workmen's Compensation Act, 1923 (VIII of 1923), rights capable of being transferred to and vested in the workman, all amounts due in respect of any compensation or liability for compensation under the said Act in respect of the death or disablement of any employee of the company ;
- (g) all sums due to any employee from a provident fund, a pension fund, a gratuity fund or any other fund for the welfare of the employees, maintained by the company ; and
- (h) the expenses of any investigation held in pursuance of section 220 or 222, in so far as they are payable by the Company.

(2) The sum to which priority is to be given under clauses (b) and (c) respectively of sub-section (1), shall not, in the case of any one claimant exceed one thousand rupees :

Provided that where a claimant under the said clause (c) is a labourer in husbandry who has entered into a contract for the payment of a portion of his wages in a lump sum at the end of the year of hiring, he shall have priority in respect of the whole of such sum, or a part thereof, as the Court may decide to be due under the contract, proportionate to the time of service up to the relevant date.

(3) Where any compensation under the Workmen's Compensation Act, 1923 (VIII of 1923), is a weekly payment, the amount due in respect thereof shall, for the purposes of clause (f) of sub-section (1), be taken to be the amount of the lump sum for which the weekly payment could, if redeemable, be redeemed if the employer made an application for that purpose under the said Act.

(4) Where any payment has been made—

- (a) to any clerk, servant, workman or labourer in the employment of a company, on account of wages or salary ; or
- (b) to any such clerk, servant, workman or labourer or, in the case of his death, to any other person in his right, on account of accrued holiday remuneration ;

out of money advanced by some person for that purpose, the person by whom the money was advanced shall, in a winding up, have a right of priority in respect of the money so advanced and paid, up to the amount by which the sum in respect of which the clerk, servant, workman or labourer, or other person in his right, would have been entitled to priority in the winding up has been diminished by reason of the payment having been made.

(5) The foregoing debts shall—

- (a) rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions; and
- (b) so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the company, and be paid accordingly out of any property comprised in or subject to that charge.

(6) Subject to the retention of such sums as may be necessary for the costs and expenses of the winding up, the foregoing debts shall be discharged forthwith so far as the assets are sufficient to meet them, and in the case of the debts to which priority is given by clause (e) of sub-section (1), formal proof thereof shall not be required except in so far as may be otherwise prescribed.

(7) In the event of a landlord or other person distraining or having distrained on any goods or effects of the company within three months next before the date of a winding-up order, the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on, or the proceeds of the sale thereof:

Provided that, in respect of any money paid under any such charge, the landlord or other person shall have the same rights of priority as the person to whom the payment is made.

(8) For the purposes of this section—

- (a) any remuneration in respect of a period of holiday or of absence from work through sickness or other good cause shall be deemed to be wages in respect of services rendered to the company during that period;
- (b) the expression “accrued holiday remuneration” includes, in relation to any person, all sums which, by virtue either of his contract of employment or of any enactment (including any order made or direction given under any Act), are payable on account of the remuneration which would, in the ordinary course, have become payable to him in respect of a period of holiday, had his employment with the company continued until he became entitled to be allowed the holiday; and
- (c) the expression “the relevant date” means—
  - (i) in the case of a company ordered to be wound up compulsorily, the date of the appointment (or first appointment) of a provisional liquidator, or if no such appointment was made, the date of the winding-up order, unless in either case the company had commenced to be wound up voluntarily before that date; and
  - (ii) in any case where sub-clause (i) does not apply, the date of the passing of the resolution for the winding up of the company.

(9) This section shall not apply in the case of a winding up where the date referred to in sub-section (5) of section 230 of the Indian Companies Act, 1913 (VII of 1913), occurred before the commencement of this Act, and in such a case, the provisions relating to preferential payments which would have applied if his Act had not been passed, shall be deemed to remain in full force.

*Effect of winding up on antecedent and other transactions*

**493. Fraudulent preference.**—(1) Any transfer of property, movable or immovable, delivery of goods, payment, execution or other act relating to property made or done by or against a company within six months before the commencement of its winding up which, had it been made or done by or against an individual within six months before the presentation of an insolvency petition on which he is adjudged insolvent, would be deemed in his insolvency a fraudulent preference, shall in the event of the company being wound up, be deemed a fraudulent preference of its creditors and be invalid accordingly: Provided that, in relation to things made or done before the commencement of this Act, this sub-section shall have effect with the substitution, for references to six months, of references to three months.

(2) For the purposes of sub-section (1), the presentation of a petition for winding up in the case of a winding up by or subject to the supervision of the Court, and the passing of a resolution for winding up in the case of a voluntary winding up, shall be deemed to correspond to the act of insolvency in the case of an individual.

(3) Any transfer or assignment by a company of all its property to trustee or the benefit of all its creditors shall be void.

**494. Liabilities and rights of certain fraudulently preferred persons.**—(1) Where, in the case of a company which is being wound up, anything made or done after the commencement of this Act is invalid under section 493 as a fraudulent preference of a person interested in property mortgaged or charged to secure the company's debt, then (without prejudice to any rights or liabilities arising apart from this provision), the person preferred shall be subject to the same liabilities, and shall have the same rights, as if he had undertaken to be personally liable as surety for the debt, to the extent of the charge on the property or the value of his interest, whichever is less.

(2) The value of the said person's interest shall be determined as at the date of the transaction constituting the fraudulent preference, and shall be determined as if the interest were free of all incumbrances other than those to which the mortgage or charge for the company's debt was then subject.

(3) On any application made to the Court with respect to any payment on the ground that the payment was a fraudulent preference of a surety or guarantor, the Court shall have jurisdiction to determine any questions with respect to the payment arising between the person to whom the payment was made and the surety or guarantor and to grant relief in respect thereof, notwithstanding that it is not necessary so to do for the purposes of the winding up, and for that purpose may give leave to bring in the surety or guarantor as a third party as in the case of a suit for the recovery of the sum paid.

This sub-section shall apply, with the necessary modifications, in relation to transactions other than the payment of money as it applies in relation to payments of money.

**495. Effect of floating charge.**—Where a company is being wound up, a floating charge on the undertaking or property of the company created within the twelve months immediately preceding the commencement of the winding up, shall, unless it is proved that the company immediately after the creation of the charge was solvent, be invalid, except to the amount of any cash paid to the company at the time of, or subsequently to the creation of,



and in consideration for, the charge, together with interest on that amount at the rate of five per cent per annum or such other rate as may for the time being be notified by the Central Government in this behalf in the Official Gazette:

Provided that in relation to a charge created more than three months before the commencement of this Act, this section shall have effect with the substitution, for references to twelve months of references to three months.

**496. Disclaimer of onerous property in case of a company which is being wound up.**—(1) Where any part of the property of a company which is being wound up consists of—

- (a) land of any tenure, burdened with onerous covenants;
- (b) shares or stock in companies;
- (c) any other property which is unsaleable or is not readily saleable, by reason of its binding the possessor thereof either to the performance of any onerous act or to the payment of any sum of money; or
- (d) unprofitable contracts;

the liquidator of the company, notwithstanding that he has endeavoured to sell or has taken possession of the property, or exercised any act of ownership in relation thereto, or done anything in pursuance of the contract, may, with the leave of the Court and subject to the provisions of this section, by writing signed by him, at any time within twelve months after the commencement of the winding up or such extended period as may be allowed by the Court, disclaim the property:

Provided that, where any such property has not come to the knowledge of the liquidator within one month after the commencement of the winding up, the power of disclaiming the property may be exercised at any time within twelve months after he has become aware thereof or such extended period as may be allowed by the Court.

(2) The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interest, and liabilities of the company, and the property of the company, in or in respect of the property disclaimed, but shall not, except so far as is necessary for the purpose of releasing the company and the property of the company from liability, affect the rights or liabilities of any other person.

(3) The Court, before or on granting leave to disclaim, may require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such other order in the matter as the Court thinks just.

(4) The liquidator shall not be entitled to disclaim any property in any case where an application in writing has been made to him by any person interested in the property requiring him to decide whether he will or will not disclaim, and the liquidator has not, within a period of twenty-eight days after the receipt of the application or such extended period as may be allowed by the Court, given notice to the applicant that he intends to apply to the Court for leave to disclaim; and in case the property is a contract, if the liquidator, after such an application as aforesaid, does not within the said period or extended period disclaim the contract, the company shall be deemed to have adopted it.

(5) The Court may, on the application of any person who is, as against the liquidator, entitled to the benefit or subject to the burden of a contract made with the company, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise as the Court thinks just; and any damages payable under the order to any such person may be proved by him as a debt in the winding up.

(6) The Court may, on an application by any person who either claims any interest in any disclaimed property or is under any liability not discharged by this Act in respect of any disclaimed property and after hearing any such persons as it thinks fit, make an order for the vesting of the property in or the delivery of the property to any person entitled thereto or to whom it may seem just that the property should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the Court thinks just, and on any such vesting order being made, the property comprised therein shall vest accordingly in the person therein named in that behalf without any conveyance or assignment for the purpose:

Provided that, where the property disclaimed is of a lease-hold nature the Court shall not make a vesting order in favour of any person claiming under the company, whether as under-lessee or as mortgagee or holder of a charge by way of demise, except upon the terms of making that person—

- (a) subject to the same liabilities and obligations as those to which the company was subject under the lease in respect of the property at the commencement of the winding up ; or
- (b) if the Court thinks fit, subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date;

and in either event (if the case so requires) as if the lease had comprised only the property comprised in the vesting order ; and any mortgagee or under-lessee declining to accept a vesting order upon such terms shall be excluded from all interest in and security upon the property, and, if there is no person claiming under the company who is willing to accept an order upon such terms, the Court shall have power to vest the estate and interest of the company in the property in any person liable, either personally or in a representative character, and either alone or jointly with the company, to perform the lessee's covenants, in the lease, freed and discharged from all estates, incumbrances and interests created therein by the company.

(7) Any person injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the company to the amount of the compensation or damages payable in respect of the injury, and may accordingly prove the amount as a debt in the winding up.

**497. Avoidance of transfers, etc., after commencement of winding up.**—(1) In the case of a voluntary winding up, any transfer of shares, not being a transfer made to or with the sanction of the liquidator, and any alteration in the status of the members of the company, made after the commencement of the winding up, shall be void.

(2) In the case of a winding up by or subject to the supervision of the Court, any disposition of the property (including actionable claims) of the company, and any transfer of shares or alteration in the status of its members, made after the commencement of the winding up, shall, unless the Court otherwise orders, be void.

**498. Avoidance of certain attachments, executions, etc.—(1)** Where any company is being wound up by or subject to the supervision of the Court,—

(a) any attachment, distress or execution put in force without leave of the Court against the estate or effects of the company, after the commencement of the winding up, or

(b) any sale held without leave of the Court of any of the properties or effects of the company after such commencement, shall be void.

(2) Nothing in this section applies to proceedings by the Government.

**499. Offences by officers of companies in liquidation.—(1)** If any person, being a past or present officer of a company which at the time of the commission of the alleged offence, is being wound up, whether by or under the supervision of the Court or voluntarily, or is subsequently ordered to be wound up by the Court, or subsequently passes a resolution for voluntary winding up—

(a) does not, to the best of his knowledge and belief, fully and truly discover to the liquidator all the property, movable and immovable, of the company, and how and to whom and for what consideration and when the company disposed of any part thereof, except such part as has been disposed of in the ordinary course of the business of the company ; or

(b) does not deliver up to the liquidator, or as he directs, all such part of the movable and immovable property of the company as is in his custody or under his control, and which he is required by law to deliver up ; or

(c) does not deliver up to the liquidator, or as he directs, all books and papers in his custody or under his control belonging to the company and which he is required by law to deliver up ; or

(d) within the twelve months next before the commencement of the winding up or at any time thereafter, conceals any part of the property of the company to the value of one hundred rupees or upwards, or conceals any debt due to or from the company ; or

(e) within the twelve months next before the commencement of the winding up or at any time thereafter, fraudulently removes any part of the property of the company to the value of one hundred rupees or upwards ; or

(f) makes any material omission in any statement relating to the affairs of the company ; or

(g) knowing or believing that a false debt has been proved by any person under the winding up, fails for a period of one month to inform the liquidator thereof ; or

(h) after the commencement of the winding up, prevents the production of any book or paper affecting or relating to the property or affairs of the company ; or

(i) within the twelve months next before the commencement of the winding up or at any time thereafter, conceals, destroys, mutilates or falsifies, or is privy to the concealment, destruction, mutilation or falsification of, any book or paper affecting or relating to the property or affairs of the company ; or

- (j) within the twelve months next before the commencement of the winding up or at any time thereafter, makes or is privy to the making of any false entry in any book or paper affecting or relating to the property or affairs of the company ; or
- (k) within the twelve months next before the commencement of the winding up or at any time thereafter, fraudulently parts with, alters or makes any omission in, or is privy to the fraudulent parting with, altering or making of any omission in, any document affecting or relating to the property or affairs of the company ; or
- (l) after the commencement of the winding up or at any meeting of the creditors of the company within the twelve months next before the commencement of the winding up, attempts to account for any part of the property of the company by fictitious losses or expenses ; or
- (m) has within the twelve months next before the commencement of the winding up or at any time thereafter, by any false representation or other fraud, obtained on credit, for or on behalf of the company, any property which the company does not subsequently pay for ; or
- (n) within the twelve months next before the commencement of the winding up or at any time thereafter, under the false pretence that the company is carrying on its business, obtains on credit, for or on behalf of the company, any property which the company does not subsequently pay for ; or
- (o) within the twelve months next before the commencement of the winding up or at any time thereafter, pawns, pledges or disposes of any property of the company which has been obtained on credit and has not been paid for, unless such pawning, pledging or disposing is in the ordinary course of the business of the company ; or
- (p) is guilty of any false representation or other fraud for the purpose of obtaining the consent of the creditors of the company or any of them, to an agreement with reference to the affairs of the company or to the winding up ;

he shall be punishable, in the case of any of the offences mentioned in clauses (m), (n) and (o), with imprisonment for a term which may extend to five years or with fine, or with both, and, in the case of any other offence, with imprisonment for a term which may extend to two years, or with fine, or with both:

Provided that it shall be a good defence—

(i) to a charge under any of the clauses, (b), (c), (d), (f), (n) and (o), if the accused proves that he had no intent to defraud; and

(ii) to a charge under any of the clauses, (a), (h), (i) and (j), if he proves that he had no intent to conceal the state of affairs of the company or to defeat the law.

(2) Where any person pawns, pledges or disposes of any property in circumstances which amount to an offence under clause (o) of sub-section (1), every person who takes in pawn or pledge or otherwise receives the property knowing it to be pawned, pledged, or disposed of in such circumstances as aforesaid, shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

(3) For the purposes of this section, the expression "officer" shall include any person in accordance with whose directions or instructions the directors of the company have been accustomed to act.

**500. Penalty for falsification of books.**—If with intent to defraud or deceive any person, any officer or contributory of any company which is being wound up—

- (a) destroys, mutilates, alters, falsifies or secretes any books, papers or securities, or
- (b) makes, or is privy to the making of, any false or fraudulent entry in any register, book of account or document belonging to the company,

he shall be punishable with imprisonment for a term which may extend to seven years, and shall also be liable to fine.

**501. Frauds by officers of companies which have gone into liquidation.**—If any person, being at the time of the commission of the alleged offence an officer of a company which is subsequently ordered to be wound up by the Court or which subsequently passes a resolution for voluntary winding up,—

- (a) has, by false pretences or by means of any other fraud, induced any person to give credit to the company ; or
- (b) with intent to defraud creditors of the company, has made or caused to be made any gift or transfer of or charge on, or has caused or connived at the levying of any execution against, the property of the company; or
- (c) with intent to defraud creditors of the company, has concealed or removed any part of the property of the company since the date of any unsatisfied judgment or order for payment of money obtained against the company, or within two months before that date,

he shall be punishable with imprisonment for a term which may extend to two years and shall also be liable to fine.

**502. Liability where proper accounts not kept.**—(1) If where a company is wound up, it is shown that proper books of account were not kept by the company throughout the period of two years immediately preceding the commencement of the winding up, or the period between the incorporation of the company and the commencement of the winding up, whichever is shorter, every officer of the company who is in default shall, unless he shows that he acted honestly and that in the circumstances in which the business of the company was carried on, the default was excusable, be punishable with imprisonment for a term which may extend to one year.

(2) For the purposes of this section, proper books of account shall be deemed not to have been kept in the case of any company, if there have not been kept—

- (a) such books or accounts as are necessary to exhibit and explain the transactions and financial position of the business of the company, including books containing entries made from day to day in sufficient detail of all cash received and all cash paid, and
- (b) where the business has involved dealings in goods, statements of the annual stocktakings and (except in the case of goods sold by way of ordinary retail trade) of all goods sold and purchased,

showing the goods and the buyers and sellers thereof in sufficient detail to enable those goods and those buyers and sellers to be identified.

**503. Responsibility for fraudulent conduct of business.—**

(1) If in the course of the winding up of a company, it appears that any business of the company has been carried on with intent to defraud creditors of the company, or creditors of any other person, or for any fraudulent purpose, the Court, on the application of the Official Liquidator, the liquidator or any creditor or contributory of the company, may, if it thinks it proper so to do, declare that any persons who were knowingly parties to the carrying on of the business in the manner aforesaid shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the Court may direct.

On the hearing of an application under this sub-section, the Official Liquidator or the liquidator, as the case may be, may himself give evidence or call witnesses.

(2) (a) Where the Court makes any such declaration, it may give such further directions as it thinks proper for the purpose of giving effect to that declaration.

(b) In particular, the Court may make provision for making the liability of any such person under the declaration a charge on any debt or obligation due from the company to him, or on any mortgage or charge or any interest in any mortgage or charge on any assets of the company held by or vested in him, or any body corporate or person on his behalf, or any body corporate or person claiming as assignee from or through the person liable or any body corporate or person acting on his behalf.

(c) The Court may, from time to time, make such further order as may be necessary for the purpose of enforcing any charge imposed under this sub-section.

(d) For the purpose of this sub-section, the expression "assignee" includes any person to whom or in whose favour, by the directions of the person liable, the debt, obligation, mortgage or charge was created, issued or transferred or the interest created, but does not include an assignee for valuable consideration (not including consideration by way of marriage) given in good faith and without notice of any of the matters on the ground of which the declaration is made.

(3) Where any business of a company is carried on with such intent or for such purpose as is mentioned in sub-section (1), every person who was knowingly a party to the carrying on of the business in the manner aforesaid, shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to five thousand rupees, or with both.

(4) This section shall apply, notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the declaration is to be made.

**504. Power of Court to assess damages against delinquent directors, etc.—**(1) If, in the course of winding up a company, it appears that any person who has taken part in the promotion or formation of the company, or any past or present director, managing agent, manager or liquidator, or any officer of the company—

(a) has misapplied or retained or become liable or accountable for any money or property of the company, or

(b) has been guilty of any misfeasance or breach of trust in relation to the company,

the Court may, on the application of the Official Liquidator or liquidator, or of any creditor or contributory made within five years from the date of the order for winding up, or of the first appointment of a liquidator in the winding up, or of the misapplication, retainer, misfeasance or breach of trust, as the case may be, whichever is longer, examine into the conduct of the person, director, managing agent, manager, liquidator or officer aforesaid, and compel him to repay or restore the money or property or any part thereof respectively, with interest at such rate as the Court thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust as the Court thinks just.

(2) This section shall apply notwithstanding that the matter is one for which the person concerned may be criminally liable.

**505. Liability under sections 503 and 504 to extend to partners or directors in past managing agency, firm or company.**—Where the person in respect of whom a declaration under section 503 or an order under section 504 is or may be made was a past managing agent of the company, and such managing agent was a firm or body corporate, the Court shall also have power to make a declaration under section 503 or an order under section 504, as the case may require, in respect of any partner in that firm or any director of that body corporate.

**506. Prosecution of delinquent officers and members of company.**—

(1) If it appears to the Court in the course of a winding up by, or subject to the supervision of, the Court, that any past or present officer, or any member, of the company has been guilty of any offence in relation to the company, the Court may, either on the application of any person interested in the winding up or of its own motion, direct the liquidator either himself to prosecute the offender or to refer the matter to the Registrar.

(2) If it appears to the liquidator in the course of a voluntary winding up that any past or present officer, or any member, of the company has been guilty of any offence in relation to the company, he shall forthwith report the matter to the Registrar and shall furnish to him such information and give to him such access to and facilities for inspecting and taking copies of any documents, being information or documents in the possession or under the control of the liquidator and relating to the matter in question, as the Registrar may require.

(3) Where any report is made under sub-section (2) to the Registrar, he may, if he thinks fit, refer the matter to the Central Government for further inquiry.

The Central Government shall thereupon investigate the matter and may if it thinks it expedient, apply to the Court for an order conferring on any person designated by the Central Government for the purpose, with respect to the company concerned, all such powers of investigating the affairs of the company as are provided by this Act in the case of a winding up by the Court.

(4) If on any report to the Registrar under sub-section (2) it appears to him that the case is not one in which proceedings ought to be taken by him, he shall inform the liquidator accordingly, and thereupon, the liquidator shall not himself take proceedings against the offender, except with the previous sanction of the company.

(5) If it appears to the Court in the course of a voluntary winding up that any past or present officer, or any member, of the company has been guilty as aforesaid, and that no report with respect to the matter has been made by the liquidator to the Registrar under sub-section (2), the Court may, on the application of any person interested in the winding up or of its own motion, direct the liquidator to make such a report, and on a report being made accordingly, the provisions of this section shall have effect as though the report had been made in pursuance of the provisions of sub-section (2).

(6) If, where any matter is reported or referred to the Registrar under this section, he considers that the case is one in which a prosecution ought to be instituted, he shall report the matter to the Central Government; and that Government may, after taking such legal advice as it thinks fit, direct the Registrar to institute proceedings:

Provided that no report shall be made by the Registrar under this sub-section without first giving the accused person an opportunity of making a statement in writing to the Registrar and of being heard thereon.

(7) When any proceedings are instituted under this section, it shall be the duty of the liquidator and of every officer and agent of the company, past and present, (other than the defendant in the proceedings), to give all assistance in connection with the prosecution which he is reasonably able to give.

For the purposes of this sub-section, the expression "agent", in relation to a company, shall be deemed to include any banker or legal adviser of the company and any person employed by the company as auditor.

(8) If any person fails or neglects to give assistance in the manner required by sub-section (7), the Court may, on the application of the Registrar, direct that person to comply with the requirements of that sub-section.

(9) Where any such application is made with respect to a liquidator, the Court may, unless it appears that the failure or neglect was due to the liquidator not having in his hands sufficient assets of the company to enable him so to do, direct that the costs of the application shall be borne by the liquidator personally.

*Provisions applicable to every mode of winding up*

**507. Disqualification for appointment as liquidator.**—(1) A body corporate shall not be qualified for appointment as liquidator of a company, whether in a winding up by or under the supervision of the Court, or in a voluntary winding up.

(2) Any appointment made in contravention of sub-section (1) shall be void.

(3) Any body corporate which acts as liquidator of a company, and every director thereof, shall be punishable with fine which may extend to one thousand rupees.

**508. Corrupt inducement affecting appointment as liquidator.**—Any person who gives, or agrees or offers to give, to any member or creditor of a company any valuable consideration with a view to—

- (a) securing his own appointment or nomination as the company's liquidator; or



(b) securing or preventing the appointment or nomination of some person other than himself, as the company's liquidator, shall be punishable with fine which may extend to one thousand rupees.

**509. Liquidator to have certain powers.**—(1) The liquidator may—

(a) with the sanction of the Court, when the company is being wound up by or subject to the supervision of the Court, and

(b) with the sanction of a special resolution of the company, in the case of a voluntary winding up,—

(i) pay any classes of creditors in full;

(ii) make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages, against the company, or whereby the company may be rendered liable ; or

(iii) compromise all calls and liabilities to calls, debts, and liabilities capable of resulting in debts, and all claims, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and a contributory or alleged contributory or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or the winding up of the company, on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability or claim, and give a complete discharge in respect thereof.

(2) In the case of a voluntary winding up, the exercise by the liquidator of the powers conferred by sub-section (1) shall be subject to the control of the Court.

(3) Any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of any such power.

**510. Books and papers of company to be evidence.**—Where any company is being wound up, all books and papers of the company and of the liquidators shall, as between the contributories of the company, be *prima facie* evidence of the truth of all matters purporting to be therein recorded.

**511. Inspection of books and papers by creditors and contributories.**—(1) At any time after the making of an order for the winding up of a company by or subject to the supervision of the Court, the Court may make such order for inspection of the books and papers of the company by creditors and contributories as the Court thinks just; and any books and papers in the possession of the company may be inspected by creditors or contributories accordingly, but not further or otherwise.

(2) Nothing in sub-section (1) shall be taken as excluding or restricting any rights conferred by any law for the time being in force—

(a) on the Central or a State Government ; or

(b) on any authority or officer thereof ; or

(c) on any person acting under the authority of any such Government or of any such authority or officer.

**512. Disposal of books and papers of company.**—(1) When a company has been wound up and is about to be dissolved, the books and papers of the company and of the liquidators may be disposed of as follows, that is to say:—

- (a) in the case of a winding up by or subject to the supervision of the Court, in such manner as the Court directs;
  - (b) in the case of a members' voluntary winding up, in such manner as the company by special resolution directs; and
  - (c) in the case of a creditors' voluntary winding up, in such manner as the committee of inspection or, if there is no such committee, as the creditors of the company, may direct.
- (2) After five years from the dissolution of the company, no responsibility shall rest on the company, the liquidators, or any person to whom the custody of the books and papers has been committed, by reason of any book or paper not being forthcoming to any person claiming to be interested therein.

(3) The Central Government shall have power to prescribe rules—

- (a) for preventing for such period (not exceeding five years from the dissolution of the company) as the Central Government thinks proper, the destruction of the books and papers of a company which has been wound up; and
  - (b) for enabling any creditor or contributory of the company to make representations to the Central Government in respect of the matters specified in clause (a) and to appeal to the Court from any direction which may be given by the Central Government in the matter.
- (4) If any person acts in contravention of any such rules or of any direction of the Central Government thereunder, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

**513. Information as to pending liquidations.**—(1) Where a company is being wound up, if the winding up is not concluded within one year after its commencement, the liquidator shall, within one month of the expiry of such year and thereafter until the winding up is concluded, at intervals of not more than twelve months or at such shorter intervals, if any, as may be prescribed, file a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in, and position of, the liquidation —

- (a) in case the winding up is by or subject to the supervision of the Court, in Court, and
  - (b) in the case of a voluntary winding up, with the Registrar.
- (2) When the statement is filed in Court under clause (a) of sub-section (1), a copy shall simultaneously be filed with the Registrar and shall be kept by him along with the other records of the company.
- (3) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled, by himself or by his agent, at all reasonable times, on payment of the prescribed fee, to inspect the statement, and to receive a copy thereof or extract therefrom.

(4) Any person untruthfully stating himself to be a creditor or contributory for the above purpose shall be deemed to be guilty of an offence under section 182 of the Indian Penal Code (Act XLV of 1860), and shall, on the application of the liquidator, be punishable accordingly.

(5) If a liquidator fails to comply with any of the requirements of this section, he shall be punishable with fine which may extend to five hundred rupees for every day during which the failure continues.

**514. Payments of liquidator into bank.**—(1) Every liquidator of a company which is being wound up by the Court shall, in such manner and at such times as may be prescribed, pay the money received by him into a Scheduled Bank to the credit of a special banking account opened by him in this behalf, and called "the Liquidation Account of..... Company":

Provided that if the Court is satisfied that for the purpose of carrying on the business of the company or of obtaining advances or for any other reason, it is to the advantage of the creditors or contributories that the liquidator should have an account with any other bank, the Court may authorise the liquidator to make his payments into and out of such other bank as the Court may select; and thereupon those payments shall be made in the prescribed manner and at the prescribed times.

(2) If any such liquidator at any time retains for more than ten days a sum exceeding five hundred rupees or such other amount as the Court may in any particular case authorise him to retain, then, unless he explains the retention to the satisfaction of the Court, he shall—

- (a) pay interest on the amount so retained in excess at the rate of twenty per cent per annum ;
- (b) be liable to pay any expenses occasioned by reason of his default ; and
- (c) also be liable to have all or such part of his remuneration as the Court may think just, disallowed, and to be removed from his office by the Court.

(3) A liquidator of a company which is being wound up by the Court shall not pay any sums received by him as liquidator into his private banking account.

**515. Unclaimed dividends and undistributed assets to be paid to Companies Liquidation Account.**—(1) Where any company is being wound up, if the liquidator has in his hands or under his control any money representing unclaimed dividends payable to any creditor or undistributed assets refundable to any contributory, which have remained unclaimed or undistributed for six months after the date on which they became payable or refundable, the liquidator shall forthwith pay the said money into the Reserve Bank of India to the credit of the Central Government in an account to be called "The Companies Liquidation Account".

(2) The liquidator shall, on the dissolution of the company, similarly pay into the said account any money representing unclaimed dividends or undistributed assets in his hands at the date of dissolution.

(3) The liquidator shall, when making any payment referred to in sub-sections (1) and (2), furnish to such officer as the Central Government may appoint in this behalf a statement in the prescribed form, setting forth in

respect of all sums included in such payment, the nature of the sums, the names and last known addresses of the persons entitled to participate therein, the amount to which each is entitled and the nature of his claim thereto, and such other particulars as may be prescribed.

(4) The liquidator shall be entitled to a receipt from the Reserve Bank of India for any money paid to it under sub-sections (1) and (2) and such receipt shall be an effectual discharge of the liquidator in respect thereof.

(5) Where the company is being wound up by the Court, the liquidator shall make the payments referred to in sub-sections (1) and (2) by transfer from the special banking account referred to in sub-section (1) of section 514.

(6) Where the company is being wound up voluntarily or subject to the supervision of the Court, the liquidator shall, when filing a statement in pursuance of sub-section (1) of section 513, indicate the sum of money which is payable to the Reserve Bank of India under sub-sections (1) and (2) of this section which he has had in his hands or under his control during the six months preceding the date to which the said statement is brought down, and shall, within fourteen days of the date of filing the said statement, pay that sum into the Companies Liquidation Account.

(7) (a) Any person claiming to be entitled to any money paid into the Companies Liquidation Account in pursuance of this section may apply to the Court for an order for payment thereof, and the Court, if satisfied that the person claiming is entitled, may make an order for the payment to that person of the sum due :

— Provided that before making such order the Court shall cause a notice to be served on such officer as the Central Government may appoint in this behalf, calling on the officer to show cause within one month from the date of the service of the notice why the order should not be made.

(b) Any person claiming as aforesaid may, instead of applying to the Court, apply to the Central Government for an order for payment of the money claimed ; and the Central Government may, if satisfied whether on a certificate by the liquidator or the Official Liquidator or otherwise, that such person is entitled to the whole or any part of the money claimed and that no application made in pursuance of clause (a) is pending in the Court, make an order for the payment to that person of the sum due to him, after taking such security from him as it may think fit.

(8) Any money paid into the Companies Liquidation Account in pursuance of this section, which remains unclaimed thereafter for a period of fifteen years, shall be transferred to the general revenue account of the Central Government ; but a claim to any money so transferred may be preferred under sub-section (7) and shall be dealt with as if such transfer had not been made, the order, if any, for payment on the claim being treated as an order for refund of revenue.

(9) Any liquidator retaining any money which should have been paid by him into the Companies Liquidation Account under this section shall—

(a) pay interest on the amount retained at the rate of twenty per cent per annum;

(b) be liable to pay any expenses occasioned by reason of his default; and

- (c) where the winding up is by or under the supervision of the Court, also be liable to have all or such part of his remuneration as the Court may think just to be disallowed and to be removed from his office by the Court.

(10) Nothing in this section shall apply in relation to companies with objects confined to a single State, which are not trading corporations.

*Supplementary Powers of Court*

**516. Meetings to ascertain wishes of creditors or contributories.—**

(1) In all matters relating to the winding up of a company, the Court may

- (a) have regard to the wishes of creditors or contributories of the company, as proved to it by any sufficient evidence ;
- (b) if it thinks fit for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held and conducted in such manner as the Court directs ; and
- (c) appoint a person to act as chairman of any such meeting and to report the result thereof to the Court.

(2) When ascertaining the wishes of creditors, regard shall be had to the value of each creditor's debt.

(3) When ascertaining the wishes of contributories, regard shall be had to the number of votes which may be cast by each contributory.

**517. Court or person before whom affidavit may be sworn.—(1)**

Any affidavit required to be sworn under the provisions or for the purposes of this Part may be sworn—

- (a) in India, before any Court, Judge or person lawfully authorised to take and receive affidavits, and
- (b) in any other country, either before any Court, Judge or person lawfully authorised to take and receive affidavits in that country or before an Indian Consul or Vice-Consul.

*Explanation.*—In this sub-section, “India” includes the State of Jammu and Kashmir.

(2) All Courts, Judges, Justices, Commissioners and persons acting judicially in India shall take judicial notice of the seal, stamp or signature, as the case may be, of any such Court, Judge, person, Consul or Vice-Consul, attached, appended or subscribed to any such affidavit or to any other document to be used for the purposes of this Part.

*Provisions as to Dissolution*

**518. Power of Court to declare dissolution of company void.—**

(1) Where a company has been dissolved, the Court may at any time within two years of the date of the dissolution, on application by the liquidator of the company or by any other person who appears to the Court to be interested, make an order, upon such terms as the Court thinks fit, declaring the dissolution to have been void; and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved.

(2) It shall be the duty of the person on whose application the order was made, within twenty-one days after the making of the order or such further time as the Court may allow, to file a certified copy of the order with the

Registrar who shall register the same ; and if such person fails so to do, he shall be punishable with fine which may extend to fifty rupees for every day during which the default continues.

**519. Power of Registrar to strike defunct company off register.**—(1) Where the Registrar has reasonable cause to believe that a company is not carrying on business or in operation, he shall send to the company by post a letter inquiring whether the company is carrying on business or in operation.

(2) If the Registrar does not within one month of sending the letter receive any answer thereto, he shall, within fourteen days after the expiration of the month, send to the company by post a registered letter referring to the first letter, and stating that no answer thereto has been received and that, if an answer is not received to the second letter within one month from the date thereof, a notice will be published in the Official Gazette with a view to striking the name of the company off the register.

(3) If the Registrar either receives an answer from the company to the effect that it is not carrying on business or in operation, or does not within one month after sending the second letter receive any answer, he may publish in the Official Gazette, and send to the company by registered post, a notice that, at the expiration of three months from the date of that notice, the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.

(4) If, in any case where a company is being wound up, the Registrar has reasonable cause to believe either that no liquidator is acting, or that the affairs of the company are fully wound up, and the returns required to be made by the liquidator have not been made for a period of six consecutive months, the Registrar shall publish in the Official Gazette and send to the company or the liquidator, if any, a like notice as is provided in sub-section (3).

(5) At the expiration of the time mentioned in the notice referred to in sub-section (3) or (4), the Registrar may, unless cause to the contrary is previously shown by the company, strike its name off the register, and shall publish notice thereof in the Official Gazette ; and on the publication in the Official Gazette of this notice, the company shall stand dissolved:

Provided that—

(a) the liability, if any, of every director or other officer exercising any power of management and of every member of the company shall continue and may be enforced as if the company had not been dissolved ; and

(b) nothing in this sub-section shall affect the power of the Court to wind up a company the name of which has been struck off the register.

(6) If a company or any member or creditor thereof feels aggrieved by the company having been struck off the register, the Court, on an application made by the company or member or creditor before the expiration of twenty years from the publication in the Official Gazette of the notice aforesaid, may, if satisfied that the company was, at the time of the striking off, carrying on business or in operation or otherwise that it is just that the company be restored to the register, order the name of the company to be restored to the register.

(7) Upon a certified copy of the order being delivered to the Registrar for registration, the company shall be deemed to have continued in existence as if its name had not been struck off; and the Court may, by the order, give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

(8) A letter or notice to be sent under this section to a company may be addressed to the company at its registered office, or, if no office has been registered, to the care of some director, managing agent, manager or other officer of the company, or, if there is no director, managing agent, manager or officer of the company whose name and address are known to the Registrar, may be sent to each of the persons who subscribed the memorandum, addressed to him at the address mentioned in the memorandum.

(9) A notice to be sent under this section to a liquidator may be addressed to the liquidator at his last known place of business.

### PART VIII

#### *Application of Act to companies formed or registered under previous companies laws*

**520. Application of Act to companies formed and registered under previous companies laws.**—In the application of this Act to existing companies, that is to say, to companies formed and registered under any previous companies law, it shall apply in the same manner—

- (a) in the case of a limited company other than a company limited by guarantee, as if the company had been formed and registered under this Act as a company limited by shares ;
- (b) in the case of a company limited by guarantee, as if the company had been formed and registered under this Act as a company limited by guarantee ; and
- (c) in the case of a company other than a limited company, as if the company had been formed and registered under this Act as an unlimited company ;

Provided that—

(i) nothing in Table A in Schedule I shall apply to a company formed and registered under Act XIX of 1857 and Act VII of 1860, or either of them, or under the Indian Companies Act, 1866 (X of 1866), or the Indian Companies Act, 1882 (VI of 1882) ;

(ii) reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under the previous companies law concerned.

**521. Application of Act to companies registered but not formed under previous companies laws.**—This Act shall apply to every company registered but not formed under any previous companies law in the same manner as it is in Part IX of this Act declared to apply to companies registered but not formed under this Act :

Provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under the previous companies law concerned.

**522. Application of Act to unlimited companies re-registered under previous companies laws.**—This Act shall apply to every unlimited company registered as a limited company in pursuance of any previous companies law, in the same manner as it applies to an unlimited company registered in pursuance of this Act as a limited company :

Provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered as a limited company under the previous companies law concerned.

**523. Mode of transferring shares in the case of companies registered under Acts XIX of 1857 and VII of 1860.**—A company registered under Act XIX of 1857 and Act VII of 1860 or either of them may cause its shares to be transferred in the manner hitherto in use, or in such other manner as the company may direct.

## PART IX.

### COMPANIES AUTHORISED TO REGISTER UNDER THIS ACT.

**524. Companies capable of being registered.**—(1) With the exceptions and subject to the provisions contained in this section,—

- (a) any company consisting of seven or more members, which was in existence on the first day of May, 1882, including any company registered under Act No. XIX of 1857 and Act No. VII of 1860 or either of them or under any laws or law in force in a Part B State, corresponding to those Acts or either of them; and
- (b) any company formed after the date aforesaid, whether before or after the commencement of this Act, in pursuance of any Act of Parliament other than this Act or of any other Indian law (including a law in force in a Part B State), or of any Act of Parliament of the United Kingdom or Letters Patent in force in India, or being otherwise duly constituted according to law, and consisting of seven or more members ;

may at any time register under this Act as an unlimited company, or as a company limited by shares, or as a company limited by guarantee ; and the registration shall not be invalid by reason only that it has taken place with a view to the company's being wound up :

Provided that—

- (i) a company registered under the Indian Companies Act, 1882 (VI of 1882), or under the Indian Companies Act, 1913 (VII of 1913), shall not register in pursuance of this section ;
- (ii) a company having the liability of its members limited by any Act of Parliament other than this Act or by any other Indian law (including a law in force in a Part B State) or by any Act of Parliament of the United Kingdom or Letters Patent in force in India, and not being a joint stock company as defined in section 525, shall not register in pursuance of this section ;
- (iii) a company having the liability of its members limited by any Act of Parliament other than this Act or by any other Indian law (including a law in force in a Part B State), or any Act of



Parliament of the United Kingdom or Letters Patent in force in India, shall not register in pursuance of this section as an unlimited company or as a company limited by guarantee ;

- (iv) a company that is not a joint stock company as defined in section 525 shall not register in pursuance of this section as a company limited by shares ;
  - (v) a company shall not register in pursuance of this section without the assent of a majority of such of its members as are present in person, or where proxies are allowed, by proxy, at a general meeting summoned for the purpose;
  - (vi) where a company not having the liability of its members limited by any Act of Parliament or any other Indian law (including a law in force in a Part B State) or by any Act of Parliament of the United Kingdom or Letters Patent in force in India, is about to register as a limited company, the majority required to assent as aforesaid shall consist of not less than three-fourths of the members present in person, or where proxies are allowed by proxy, at the meeting ;
  - (vii) where a company is about to register as a company limited by guarantee, the assent to its being so registered shall be accompanied by a resolution declaring that each member undertakes to contribute to the assets of the company, in the event of its being wound up while he is a member, or within one year after he ceases to be a member, for payment of the debts and liabilities of the company or of such debts and liabilities as may have been contracted before he ceases to be a member, and of the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount.
- (2) In computing any majority required for the purposes of sub-section (1), when a poll is demanded, regard shall be had to the number of votes to which each member is entitled according to the regulations of the company.
- (3) Nothing in this section shall be deemed to apply to any company the registered office whereof at the commencement of this Act is in Burma, Aden or Pakistan, or in the State of Jammu and Kashmir.
- 525. Definition of "joint-stock company".**—(1) For the purposes of this Part, so far as it relates to the registration of companies as companies limited by shares, a joint-stock company means a company having a permanent paid up or nominal share capital of fixed amount divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in the one way and partly in the other, and formed on the principle of having for its members the holders of those shares or that stock, and no other persons.
- (2) Such a company, when registered with limited liability under this Act, shall be deemed to be a company limited by shares.

**526. Requirements for registration by joint-stock companies.**—Before the registration in pursuance of this Part of a joint-stock company, there shall be delivered to the Registrar the following documents :—

- (a) a list showing the names, addresses and occupations of all persons who on a day named in the list, not being more than six clear days before the day of registration, were members of the company,

with the addition of the shares or stock held by them respectively, distinguishing, in cases where the shares are numbered, each share by its number ;

- (b) a copy of any Act of Parliament or other Indian law, Act of Parliament of the United Kingdom, Royal Charter, Letters Patent, deed of settlement, contract of co-partnery or other instrument constituting or regulating the company ; and
- (c) if the company is intended to be registered as a limited company, a statement specifying the following particulars :—
  - (i) the nominal share capital of the company and the number or shares into which it is divided or the amount of stock of which it consists ;
  - (ii) the number of shares taken and the amount paid on each share ;
  - (iii) the name of the company, with the addition of the word “ Limited ” as the last word thereof ; and
  - (iv) in the case of a company intended to be registered as a company limited by guarantee, the terms of the resolution declaring the amount of the guarantee.

**527. Requirements for registration by companies not being joint-stock companies.**—Before the registration in pursuance of this Part of any company not being a joint-stock company, there shall be delivered to the Registrar the following documents :—

- (a) a list showing the names, addresses and occupations of the directors, the managing agent, if any, and the manager, if any, of the company ;
- (b) a copy of any Act of Parliament or other Indian law, Act of Parliament of the United Kingdom, Letters Patent, deed of settlement, contract of co-partnery or other instrument constituting or regulating the company ; and
- (c) in the case of a company intended to be registered as a company limited by guarantee, a copy of the resolution declaring the amount of the guarantee.

**528. Authentication of statements of existing companies.**—The lists of members and directors and any other particulars relating to the company required to be delivered to the Registrar shall be duly verified by the declaration of any two or more directors or other principal officers of the company.

**529. Power of Registrar to require evidence as to nature of company.**—The Registrar may require such evidence as he thinks necessary for the purpose of satisfying himself whether any company proposing to be registered is or is not a joint-stock company as defined in section 525.

**530. Notice to customers on registration of banking company with limited liability.**—(1) Where a banking company, which was in existence on the first day of May, 1882, proposes to register as a limited company under this Part, it shall, at least thirty days before so registering, give notice of its intention so to register, to every person who has a banking account with the company, either by delivery of the notice to him, or by posting it to him at, or delivering it at, his last known address.

(2) If the banking company omits to give the notice required by sub-section (1), then, as between the company and the person for the time being interested in the account in respect of which the notice ought to have been given, and so far as respects the account down to the time at which notice is given, but not further or otherwise, the certificate of registration with limited liability shall have no operation.

**531. Change of name for purposes of registration.**—Where the name of a company seeking registration under this Part is one which in the opinion of the Central Government is undesirable, the company may, with the approval of the Central Government signified in writing, change its name with effect from the date of its registration under this Part :

Provided that the like assent of the members of the company shall be required to the change of name as is required by section 524 to the registration of the company under this Part.

**532. Addition of " Limited " to name.**—When a company registers in pursuance of this Part with limited liability, the word " Limited " shall form, and be registered as, part of its name :

Provided that this section shall not be taken as excluding the operation of section 21.

**533. Certificate of registration of existing companies.**—On compliance with the requirements of this Part with respect to registration, and on payment of such fees, if any, as are payable under Table B in Schedule I, the Registrar shall certify under his hand that the company applying for registration is incorporated as a company under this Act, and in the case of a limited company that it is limited, and thereupon the company shall be so incorporated.

**534. Vesting of property on registration.**—All property, movable and immovable, (including actionable claims), belonging to or vested in a company at the date of its registration in pursuance of this Part, shall, on such registration, pass to and vest in the company as incorporated under this Act for all the estate and interest of the company therein.

**535. Saving for existing liabilities.**—The registration of a company in pursuance of this Part shall not affect the rights or liabilities of the company in respect of any debt or obligation incurred, or any contract entered into, by to, with, less or on behalf of, the company before registration.

**536. Continuation of pending legal proceedings.**—All suits and other legal proceedings which, at the time of the registration of a company in pursuance of this Part, are pending by or against the company, or, any officer or member thereof, may be continued in the same manner as if the registration had not taken place :

Provided that execution shall not issue against the property or person of any individual member of the company on any decree or order obtained in any such suit or proceeding; but, in the event of the property of the company being insufficient to satisfy the decree or order, an order may be obtained for winding up the company.

**537. Effect of registration under Part.**—(1) When a company is registered in pursuance of this Part, sub-sections (2) to (7) shall apply.

(2) All provisions contained in any Act of Parliament or other Indian law, or other instrument constituting or regulating the company, including, in the case of a company registered as a

company limited by guarantee, the resolution declaring the amount of the guarantee, shall be deemed to be conditions and regulations of the company, in the same manner and with the same incidents as if so much thereof as would, if the company had been formed under this Act, have been required to be inserted in the memorandum, were contained in a registered memorandum, and the residue thereof were contained in registered articles.

(3) All the provisions of this Act shall apply to the company and the members, contributories and creditors thereof, in the same manner in all respects as if it had been formed under this Act, subject as follows :—

- (a) Table A in Schedule I shall not apply unless and except in so far as it is adopted by special resolution ;
- (b) the provisions of this Act relating to the numbering of shares shall not apply to any joint-stock company whose shares are not numbered ;
- (c) subject to the provisions of this section, the company shall not have power to alter any provision contained in any Act of Parliament or other Indian law, relating to the company ;
- (d) subject to the provisions of this section, the company shall not have power, without the sanction of the Central Government, to alter any provision contained in any Act of Parliament of the United Kingdom, Royal Charter or Letters Patent, relating to the company ;
- (e) the company shall not have power to alter any provision contained in any Act of Parliament or other Indian law or in any Act of Parliament of the United Kingdom, Royal Charter or Letters Patent, with respect to the objects of the company ;
- (f) in the event of the company being wound up, every person shall be a contributory, in respect of the debts and liabilities of the company contracted before registration, who is liable to pay or contribute to the payment of any debt or liability of the company contracted before registration, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves in respect of any such debt or liability ; or to pay or contribute to the payment of the costs, charges and expenses of winding up the company, so far as relates to such debts or liabilities as aforesaid ;
- (g) in the event of the company being wound up, every contributory shall be liable to contribute to the assets of the company, in the course of the winding up, all sums due from him in respect of any such liability as aforesaid ; and in the event of the death or insolvency of any contributory, the provisions of this Act with respect to the legal representatives of deceased contributories, or with respect to the assignees of insolvent contributories, as the case may be, shall apply.

(4) The provisions of this Act with respect to—

- (a) the registration of an unlimited as a limited company ;
- (b) the powers of an unlimited company on registration as a limited company, to increase the nominal amount of its share capital and to provide that a portion of its share capital shall not be capable of being called up except in the event of winding up ;

- (c) the power of a limited company to determine that a portion of its share capital shall not be capable of being called up except in the event of winding up ; .

shall apply, notwithstanding any provisions contained in any Act of Parliament or other Indian law, or other instrument constituting or regulating the company.

(5) Nothing in this section shall authorise the company to alter any such provisions contained in any instrument constituting or regulating the company as would, if the company had originally been formed under this Act, have been required to be contained in the memorandum and are not authorised to be altered by this Act.

(6) None of the provisions of this Act [apart from those of section 374] shall derogate from any power of altering its constitution or regulations which may be vested in the company, by virtue of any Act of Parliament or other Indian law, or other instrument constituting or regulating the company.

(7) In this section, the expression "instrument" includes deed of settlement, contract of copartnership, Act of Parliament of the United Kingdom, Royal Charter, and Letters Patent.

**538. Power to substitute memorandum and articles for deed of settlement.**—(1) Subject to the provisions of this section, a company registered in pursuance of this Part may, by special resolution, alter the form of its constitution by substituting a memorandum and articles for a deed of settlement.

(2) The provisions of sections 14 to 16 with respect to an alteration of the objects of a company shall, so far as applicable, apply to an alteration under this section, with the following modifications :—

- (a) there shall be substituted for the printed copy of the altered memorandum required to be filed with the Registrar a printed copy of the substituted memorandum and articles ; and
- (b) on the registration of the alteration being certified by the Registrar, the substituted memorandum and articles shall apply to the company in the same manner as if it were a company registered under this Act with that memorandum and those articles, and the company's deed of settlement shall cease to apply to the company.

(3) An alteration under this section may be made either with or without any alteration of the objects of the company under this Act.

(4) In this section, the expression "deed of settlement" includes any contract of copartnership, Act of Parliament of the United Kingdom, Royal Charter or Letters Patent, or other instrument constituting or regulating the company, not being an Act of Parliament or other Indian law.

**539. Power of Court to stay or restrain proceedings.**—The provisions of this Act with respect to staying and restraining suits and other legal proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding-up order shall, in the case of a company registered in pursuance of this Part, where the application to stay or restrain is by a creditor, extend to suits and other legal proceedings against any contributory of the company.

**540. Suits stayed on winding-up order.**—Where an order has been made for winding up a company registered in pursuance of this Part, no suit or other legal proceeding shall be commenced or proceeded with against the company or any contributory of the company in respect of any debt of the company, except by leave of the Court and except on to such terms as the Court may impose.

## PART X

### WINDING UP OF UNREGISTERED COMPANIES

**541. Meaning of “unregistered company”.**—For the purposes of this Part, the expression “unregistered company”—

(a) shall not include—

- (i) a railway company incorporated by any Act of Parliament or other Indian law or any Act of Parliament of the United Kingdom ;
- (ii) a company registered under this Act or under any previous companies law and not being a company the registered office whereof was in Burma, Aden or Pakistan immediately before the separation of that country from India or in the State of Jammu and Kashmir immediately before the 26th January, 1950 ; and

(b) save as aforesaid, shall include any partnership, association or company consisting of more than seven members.

**542. Winding up of unregistered companies.**—(1) Subject to the provisions of this Part, any unregistered company may be wound up under this Act, and all the provisions of this Act with respect to winding up shall apply to an unregistered company, with the exceptions and additions mentioned in sub-sections (2) to (5).

(2) For the purpose of determining the Court having jurisdiction in the matter of the winding up, an unregistered company shall be deemed to be registered in the State where its principal place of business is situate or, if it has a principal place of business situate in more than one State, then in each State where it has a principal place of business ; and the principal place of business situate in that State in which proceedings are being instituted shall, for all the purposes of the winding up, be deemed to be the registered office of the company.

(3) No unregistered company shall be wound up under this Act voluntarily or subject to the supervision of the Court.

(4) The circumstances in which an unregistered company may be wound up are as follows :—

- (a) if the company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs ;
- (b) if the company is unable to pay its debts ;
- (c) if the Court is of opinion that it is just and equitable that the company should be wound up.

(5) An unregistered company shall, for the purposes of this Act, be deemed to be unable to pay its debts—

(a) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding five hundred rupees then due, has served on the company, by leaving at its principal place of business, or by delivering to the secretary, or some director, managing agent, manager or principal officer of the company, or by otherwise serving in such manner as the Court may approve or direct, a demand under his hand requiring the company to pay the sum so due, and the company has, for three weeks after the service of the demand, neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor ;

(b) if any suit or other legal proceeding has been instituted against any member for any debt or demand due or claimed to be due, from the company or from him in his character of member, and notice in writing of the institution of the suit or other legal proceeding having been served on the company by leaving the same at its principal place of business or by delivering it to the secretary, or some director, managing agent, manager or principal officer of the company or by otherwise serving the same in such manner as the Court may approve or direct, the company has not, within ten days after service of the notice,—

(i) paid, secured or compounded for the debt or demand, or

(ii) procured the suit or other legal proceeding to be stayed, or

(iii) indemnified the defendant to his reasonable satisfaction against the suit or other legal proceeding, and against all costs, damages and expenses to be incurred by him by reason of the same ;

(c) if execution or other process issued on a decree or order of any Court in favour of a creditor against the company, or any member thereof as such, or any person authorised to be sued as nominal defendant on behalf of the company, is returned unsatisfied in whole or in part ;

(d) if it is otherwise proved to the satisfaction of the Court that the company is unable to pay its debts.

**543. Power to wind up foreign companies, although dissolved.—**

Where a body corporate incorporated outside India which has been carrying on business in India, ceases to carry on business in India, it may be wound up as an unregistered company under this Part, notwithstanding that the body corporate has been dissolved or otherwise ceased to exist as such under or by virtue of the laws of the country under which it was incorporated.

**544. Contributories in winding up of unregistered company.—**

(1) In the event of an unregistered company being wound up, every person shall be deemed to be a contributory, who is liable to pay, or contribute to the payment of,—

(a) any debt or liability of the company, or

(b) any sum for the adjustment of the rights of the members among themselves, or

(c) the costs, charges and expenses of winding up the company.

(2) Every contributory shall be liable to contribute to the assets of the company all sums due from him in respect of any such liability as aforesaid.

(3) In the event of the death or insolvency of any contributory, the provisions of this Act with respect to the legal representatives of deceased contributories, or with respect to the assignees of insolvent contributories, as the case may be, shall apply.

**545. Power to stay or restrain proceedings.**—The provisions of this Act with respect to staying and restraining suits and legal proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding-up order shall, in the case of an unregistered company, where the application to stay or restrain is by a creditor, extend to suits and legal proceedings against any contributory of the company.

**546. Suits etc. stayed on winding up order.**—Where an order has been made for winding up an unregistered company, no suit or other legal proceeding shall be proceeded with or commenced against any contributory of the company in respect of any debt of the company, except by leave of the Court and except on such terms as the Court may impose.

**547. Directions as to property in certain cases.**—(1) If an unregistered company has no power to sue and be sued in a common name, or if for any reason it appears expedient, the Court may, by the winding-up order or by any subsequent order, direct that all or any part of the property, movable or immovable (including actionable claims), belonging to the company or held by trustees on its behalf, shall vest in the liquidator by his official name; and thereupon the property or the part thereof specified in the order shall vest accordingly.

(2) The liquidator may, after giving such indemnity, if any, as the Court may direct, bring or defend in his official name any suit or other legal proceeding relating to that property, or which it is necessary to bring or defend for the purpose of effectually winding up the company and recovering its property.

**548. Provisions of Part cumulative.**—(1) The provisions of this Part with respect to unregistered companies shall be in addition to, and not in restriction of, any provisions hereinbefore in this Act contained with respect to the winding up of companies by the Court.

(2) The Court or liquidator may exercise any powers or do any act in the case of unregistered companies which might be exercised or done by the Court or liquidator in winding up companies formed and registered under this Act :

Provided that an unregistered company shall not, except in the event of its being wound up, be deemed to be a company under this Act, and then only to the extent provided by this Part.

**549. Saving and construction of enactments conferring power to wind up partnership, association or company in certain cases.**—Nothing in this Part shall affect the operation of any enactment which provides for any partnership, association or company being wound up, or being wound up as a company or as an unregistered company, under any enactment repealed by this Act :

Provided that references in any such first-mentioned enactment to any such repealed enactment shall be read as references to the corresponding provision, if any, of this Act.



## PART XI

### COMPANIES INCORPORATED OUTSIDE INDIA

#### *Provisions as to Establishment of Places of Business in India*

**550. Application of sections 551 to 561 to foreign companies.**—Sections 551 to 561, both inclusive, shall apply to all foreign companies, that is to say, companies falling under the following two classes, namely :—

- (a) companies incorporated outside India which, after the commencement of this Act, establish a place of business within India; and
- (b) companies incorporated outside India which have, before the commencement of this Act, established a place of business within India and continue to have an established place of business within India at the commencement of this Act.

**551. Documents etc. to be delivered to Registrar by foreign companies carrying on business in India.**—(1) Foreign companies which, after the commencement of this Act, establish a place of business within India shall, within one month of the establishment of the place of business, deliver to the Registrar for registration :—

- (a) a certified copy of the charter, statute or memorandum and articles of the company or other instrument constituting or defining the constitution of the company, and, if the instrument is not in the English language, a certified translation thereof ;
- (b) the full address of the registered or principal office of the company ;
- (c) a list of the directors and secretary of the company, containing the particulars mentioned in sub-section (2) ;
- (d) the name and address or the names and addresses of some one or more persons resident in India, authorised to accept on behalf of the company service of process and any notices or other documents required to be served on the company ;
- (e) the full address of the office of the company in India which is to be deemed its principal place of business in India.

(2) The list referred to in clause (c) of sub-section (1) shall contain the following particulars, that is to say :—

- (a) with respect to each director, —
  - (i) in the case of an individual, his present name and surname in full, any former name or names and surname or surnames in full, his usual residential address, his nationality, and if that nationality is not the nationality of origin, his nationality of origin, and his business occupation, if any, or if he has no business occupation but holds any other directorship or directorships, particulars of that directorship or of some one of those directorships ; and
  - (ii) in the case of a body corporate, its corporate name and registered or principal office, and the full name, address, nationality and nationality of origin, if different from that nationality, of each of its directors ;

(b) with respect to the secretary, or where there are joint secretaries, with respect to each of them :—

(i) in the case of an individual, his present name and surname, any former name or names and surname or surnames, and his usual residential address ; and

(ii) in the case of a body corporate, its corporate name and registered or principal office :

Provided that, where all the partners in a firm are joint secretaries of the company, the name and principal office of the firm may be stated instead of the particulars mentioned in clause (b) of this sub-section.

(3) Clauses (2) and (3) of the *Explanation* to sub-section (1) of section 281 shall apply for the purpose of the construction of references in sub-section (2) to present and former names and surnames as they apply for the purposes of the construction of such references in sub-section (1) of section 281.

(4) Foreign companies, other than those mentioned in sub-section (1), shall, if they have not delivered to the Registrar before the commencement of this Act the documents and particulars specified in sub-section (1) of section 277 of the Indian Companies Act, 1913 (VII of 1913), continue to be subject to the obligation to deliver those documents and particulars in accordance with that Act.

**552. Return to be delivered to Registrar by foreign company where documents, etc., altered.**—If any alteration is made or occurs in :—

(a) the charter, statutes, or memorandum and articles of a foreign company or other instrument constituting or defining the constitution of a foreign company ; or

(b) the registered or principal office of a foreign company ; or

(c) the directors or secretary of a foreign company or the particulars contained in the list of the directors and secretary ; or

(d) the name or address of any of the persons authorised to accept service on behalf of a foreign company ; or

(e) the principal place of business of the company in India ;

the company shall, within the prescribed time, deliver to the Registrar for registration a return containing the prescribed particulars of the alteration.

**553. Accounts of foreign company.**—(1) Every foreign company shall, in every calendar year, —

(a) make out a balance sheet and profit and loss account in such form, containing such particulars and including or having annexed or attached thereto such documents (including, in particular documents relating to every subsidiary of the foreign company) as under the provisions of this Act it would, if it had been a company within the meaning of this Act, have been required to make out and lay before the company in general meeting ; and

(b) deliver three copies of those documents to the Registrar:

Provided that the Central Government may, by notification in the Official Gazette, direct that, in the case of any foreign company or class of foreign company of the requirements of clause (a) shall not apply or shall apply subject to such exceptions and modifications as may be specified in the notification.

(2) If any such document as is mentioned in sub-section (1) is not in the English language, there shall be annexed to it a certified translation thereof.

(3) Every foreign company shall send to the Registrar with the documents required to be delivered to him under sub-section (1) three copies of a list in the prescribed form of all places of business established by the company in India as at the date with reference to which the balance sheet referred to in sub-section (1) is made out.

**554. Obligation to state name of foreign company, whether limited, and country where incorporated.**—Every foreign company shall—

- (a) in every prospectus inviting subscriptions for its shares or debentures in India, state the country in which the company is incorporated;
- (b) conspicuously exhibit on the outside of every office or place where it carries on business in India the name of the company and the country in which it is incorporated in letters easily legible in English characters and also, in the characters of the language or one of the languages in general use in the locality in which the office or place is situate;
- (c) cause the name of the company and of the country in which the company is incorporated, to be stated in legible English characters in all bill-heads and letter paper, and in all notices, advertisements and other official publications of the company; and
- (d) if the liability of the members of the company is limited, cause notice of that fact—
  - (i) to be stated in every such prospectus as aforesaid and in all bill-heads, letter paper, notices, advertisements and other official publications of the company, in legible English characters, and
  - (ii) to be conspicuously exhibited on the outside of every office or place where it carries on business in India in legible English characters and also in the characters of the language or one of the languages in general use in the locality in which the office or place is situate.

**555. Service on foreign company.**—Any process, notice, or other document required to be served on a foreign company shall be sufficiently served, if addressed to any person whose name has been delivered to the Registrar under the foregoing provisions of this Part and left at, or sent by post to, the address which has been so delivered :

Provided that —

- (a) where any such company makes default in delivering to the Registrar the name and address of a person resident in India who is authorised to accept on behalf of the company service of process, notices or other documents ; or

- (b) if at any time all the persons whose names and addresses have been so delivered are dead or have ceased so to reside, or refuse to accept service on behalf of the company, or for any reason, cannot be served ;

a document may be served on the company by leaving it at, or sending it by post to, any place of business established by the company in India.

**556. Office where documents to be filed.**—(1) Any document which any foreign company is required to deliver to the Registrar shall be delivered to the Registrar having jurisdiction over New Delhi, and references to the Registrar in this Part [except in sub-section(2)] shall be construed accordingly.

(2) Any such document as is referred to in sub-section (1) shall also be delivered to the Registrar of the State in which the principal place of business of the company is situate.

(3) If any foreign company ceases to have a place of business in India, it shall forthwith give notice of the fact to the Registrar, and as from the date on which notice is so given, the obligation of the company to deliver any document to the Registrar shall cease, provided it has no other place of business in India.

**557. Penalties.**—If any foreign company fails to comply with any of the foregoing provisions of this Part, the company, and every officer or agent of the company who is in default, shall be punishable with fine which may extend to one thousand rupees, and in the case of a continuing offence, with an additional fine which may extend to fifty rupees for every day during which the default continues.

**558. Company's failure to comply with Part not to affect its liability under contracts etc.**—Any failure by a foreign company to comply with any of the foregoing provisions of this Part shall not affect the validity of any contract, dealing or transaction entered into by the company or its liability to be sued in respect thereof; but the company shall not be entitled to bring any suit, claim any set off, make any counter-claim or institute any legal proceeding in respect of any such contract, dealing or transaction, until it has complied with the provisions of this Part.

**559. Registration of charges, appointment of receiver and books of account.**—(1) The provisions of Part V (sections 118 to 138), shall apply *mutatis mutandis* to :—

- (a) charges on properties in India which are created by a foreign company after the 15th day of January 1937 ; and  
(b) charges on property in India which is acquired by any foreign company after the day aforesaid :

Provided that where a charge is created, or the completion of the acquisition of the property takes place, outside India, sub-section (5) of section 119 and the proviso to sub-section (1) of section 121 shall have effect as if the property, wherever situated, were situated outside India.

(2) The provisions of section 112 shall apply *mutatis mutandis* to a foreign company.

(3) The provisions of section 194 shall apply to a foreign company to the extent of requiring it to keep at its principal place of business in India the books of account referred to in that section, with respect to moneys received and expended, sales and purchases made, and assets and liabilities, in the course of or in relation to its business in India.

(4) In applying the sections referred to in sub-sections (1), (2) and (3) to a foreign company as aforesaid, references in those sections to the Registrar shall be deemed to be references to the Registrar of Joint Stock Companies having jurisdiction over New Delhi, and references to the registered office of the foreign company shall be deemed to be references to its principal place of business in India.

**560. Fees for registration of documents under Part.—**There shall be paid to the Registrar for registering any document required by the foregoing provisions of this Part to be registered by him, such fees as may be prescribed.

**561. Interpretation of foregoing sections of Part.—**For the purposes of the foregoing provisions of this Part—

- (a) the expression “certified” means certified in the prescribed manner to be a true copy or a correct translation ;
- (b) the expression “director”, in relation to a company, includes any person in accordance with whose directions or instructions the directors of the company are accustomed to act ;
- (c) the expression “place of business” includes a share transfer or share registration office ;
- (d) the expression “prospectus” has the same meaning as when used in relation to a company incorporated under this Act ; and
- (e) the expression “secretary” includes any person occupying the position of secretary, by whatever name called.

*Prospectuses*

**562. Dating of prospectus and particulars to be contained therein.—**(1) No person shall issue, circulate or distribute in India any prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside India, whether the company has or has not established, or when formed will or will not establish, a place of business in India, unless the prospectus is dated; and

- (a) contains particulars with respect to the following matters :—
  - (i) the instrument constituting or defining the constitution of the company ;
  - (ii) the enactments or provisions having the force of an enactment, by or under which the incorporation of the company was effected ;
  - (iii) an address in India where the said instrument, enactments, or provisions, or copies thereof, and if the same are not in English, a translation thereof certified in the prescribed manner, can be inspected ;
  - (iv) the date on which and the country in which the company was incorporated ;
  - (v) whether the company has established a place of business in India, and, if so, the address of its principal office in India ;
- (b) subject to the provisions of this section, states the matters specified in Part I of Schedule II and sets out the reports specified in Part II of that Schedule, subject always to the provisions contained in Part III of that Schedule :

Provided that sub-clauses (i), (ii) and (iii) of clause (a) shall not apply in the case of a prospectus issued more than two years after the date at which the company is entitled to commence business; and in the application of Part I of Schedule II for the purposes of this sub-section, clause 2 thereof shall have effect with the substitution, for references to the articles, of references to the constitution of a company.

(2) Any condition requiring or binding an applicant for shares or debentures to waive compliance with any requirement imposed by virtue of clause (a) or (b) of sub-section (1), or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus, shall be void.

(3) No person shall issue to any person in India a form of application for shares in or debentures of such a company or intended company as is mentioned in sub-section (1), unless the form is issued with a prospectus which complies with the provisions of this Part and the issue whereof in India does not contravene the provisions of section 563;

Provided that this sub-section shall not apply if it is shown that the form of application was issued in connection with a *bona fide* invitation to a person to enter into an underwriting agreement with respect to the shares or debentures.

(4) In the event of non-compliance with or contravention of any of the requirements imposed by clauses (a) and (b) of sub-section (1), a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance or contravention, if—

- (a) as regards any matter not disclosed, he proves that he had no knowledge thereof; or
- (b) he proves that the non-compliance or contravention arose from an honest mistake of fact on his part; or
- (c) the non-compliance or contravention was in respect of matters which, in the opinion of the Court dealing with the case, were immaterial or were otherwise such as ought in the opinion of that Court, having regard to all the circumstances of the case, reasonably to be excused:

Provided that, in the event of failure to include in a prospectus a statement with respect to the matters contained in clause 18 of Schedule II no director or other person shall incur any liability in respect of the failure, unless it be proved that he had knowledge of the matters not disclosed.

(5) This section—

- (a) shall not apply to the issue to existing members or debenture holders of a company of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant for shares or debentures will or will not have the right to renounce in favour of other persons; and
- (b) except in so far as it requires a prospectus to be dated, shall not apply to the issue of a prospectus relating to shares or debentures which are or are to be in all respects uniform with shares or debentures previously issued and for the time being dealt in or quoted on a stock exchange in or outside India, notified in this behalf by the Central Government in the Official Gazette;

but, subject as aforesaid, this section shall apply to a prospectus or form of application whether issued on or with reference to the formation of a company or subsequently.

(6) Nothing in this section shall limit or diminish any liability which any person may incur under the general law or under this Act apart from this section.

**563. Provisions as to expert's consent and allotment.—(1)** No person shall issue, circulate or distribute in India any prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside India, whether the company has or has not established, or when formed will or will not establish, a place of business in India—

(a) if, where the prospectus includes a statement purporting to be made by an expert, he has not given, or has before delivery of the prospectus for registration withdrawn, his written consent to the issue of the prospectus with the statement included in the form and context in which it is included, or there does not appear in the prospectus a statement that he has given and has not withdrawn his consent as aforesaid ; or

(b) if the prospectus does not have the effect, where an application is made in pursuance thereof, of rendering all persons concerned bound by all the provisions (other than penal provisions) of sections 66, 67 and 68 so far as applicable.

(2) In this section, the expression "expert" includes an engineer, a valuer, an accountant and any other person whose profession gives authority to a statement made by him; and for the purposes of this section a statement shall be deemed to be included in a prospectus if it is contained in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.

**564. Registration of prospectus.—(1)** No person shall issue, circulate or distribute in India any prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside India, whether the company has or has not established, or when formed will or will not establish, a place of business in India, unless before the issue, circulation or distribution of the prospectus in India, a copy thereof certified by the chairman and two other directors of the company as having been approved by resolution of the managing body has been delivered for registration to the Registrar and the prospectus states on the face of it that a copy has been so delivered, and there is endorsed on or attached to the copy—

(a) any consent to the issue of the prospectus required by section 563 ;

(b) a copy of any contract required by clause 16 of Schedule II to be stated in the prospectus or, in the case of a contract not reduced into writing, a memorandum giving full particulars thereof ; and

(c) where the persons making any report required by Part II of Schedule II have made therein, or have, without giving the reasons, indicated therein, any such adjustments as are mentioned in clause 32 of that Schedule, a written statement signed by those persons setting out the adjustments and giving the reasons therefor.

(2) The references in clause (b) of sub-section (1) to the copy of a contract required thereby to be endorsed on or attached to a copy of the prospectus shall, in the case of a contract wholly or partly in a language other than English, be taken as references to a copy of a translation of the contract in English or a copy embodying a translation in English of the parts which are not in English, as the case may be, being a translation certified in the prescribed manner to be a correct translation.

**565. Penalty for contravention of sections 562, 563 and 564.**—Any person who is knowingly responsible —

(a) for the issue, circulation or distribution of a prospectus, or

(b) for the issue of a form of application for shares or debentures, in contravention of any of the provisions of sections 562, 563 and 564, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

**566. Civil liability for mis-statements in prospectus.**—Section 55 shall extend to every prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside India whether the company has or has not established, or when formed will or will not establish, a place of business in India, with the substitution for references in section 55 to section 53 of this Act, of references to section 563 thereof.

**567. Interpretation of provisions as to prospectuses.**—(1) Where any document by which any shares in or debentures of a company incorporated outside India are offered for sale to the public would, if the company concerned had been a company within the meaning of this Act, have been deemed by virtue of section 57, to be a prospectus issued by the company, that document shall be deemed to be, for the purpose of this Part, a prospectus issued by the company offering such shares or debentures for subscription.

(2) An offer of shares or debentures for subscription or sale to any person whose ordinary business it is to buy or sell shares or debentures, whether as principal or as agent, shall not be deemed to be an offer to the public for the purposes of this Part.

(3) In this Part, the expressions “prospectus”, “shares” and “debentures” have the same meanings as when used in relation to a company incorporated under this Act.

## PART XII

### REGISTRATION OFFICES AND OFFICERS AND FEES

**568. Registration Offices.**—(1) For the purposes of the registration of companies under this Act, there shall be offices at such places as the Central Government thinks fit.

(2) The Central Government may appoint such Registrars and Assistant Registrars as it thinks necessary for the registration of companies under this Act, and may make regulations with respect to their duties.

(3) The salaries of the persons appointed under this section shall be fixed by the Central Government.



(4) The Central Government may direct a seal or seals to be prepared for the authentication of documents required for, or connected with, the registration of companies.

(5) Whenever any act is by this Act directed to be done to or by the Registrar, it shall, until the Central Government otherwise directs, be done to or by the existing Registrar of joint-stock companies, or in his absence, to or by such person as the Central Government may for the time being authorise:

Provided that in the event of the Central Government altering the constitution of the existing registry offices or any of them, any such act shall be done to or by such officer and at such place, with reference to the local situation of the registered offices of the companies concerned, as the Central Government may appoint.

**569. Inspection, production and evidence of documents kept by Registrar.**—(1) Any person may—

- (a) inspect the documents kept by the Registrar, on payment for each inspection, of a fee of one rupee;
- (b) require a certificate of the incorporation of any company, or a copy or extract of any other document or any part of any other document to be certified by the Registrar, on payment of a fee of five rupees in the case of a certificate of incorporation and of six annas for every one hundred words or fractional part thereof required to be copied, in the case of a certified copy or extract:

Provided that the rights conferred by this sub-section shall be exercisable—

- (i) in relation to documents delivered to the Registrar with a prospectus in pursuance of sub-clause (i) of clause (b) of sub-section (1) of section 53, only during the fourteen days beginning with the date of publication of the prospectus; and at other times, only with the permission of the Central Government; and
- (ii) in relation to documents so delivered in pursuance of clause (b) of sub-section (1) of section 564, only during the fourteen days beginning with the date of the prospectus; and at other times, only with the permission of the Central Government.

(2) No process for compelling the production of any document kept by the Registrar shall issue from any Court except with the leave of that Court; and any such process, if issued, shall bear thereon a statement that it is issued with the leave of the Court.

(3) A copy of, or extract from, any document kept and registered at any of the offices for the registration of companies under this Act, certified to be a true copy under the hand of the Registrar (whose official position it shall not be necessary to prove), shall, in all legal proceedings, be admissible in evidence as of equal validity with the original document.

(4) Any person untruthfully stating himself in writing for the purposes of proviso (ii) to sub-section (1), to be a member or creditor of a company shall be punishable with fine which may extend to five hundred rupees.

**570. Fees in Table B in Schedule I to be paid.**—In respect of the several matters mentioned in Table B in Schedule I, there shall, subject to the limitations imposed by that Schedule, be paid to the Registrar the several fees therein specified :

Provided that no fees shall be charged in respect of the registration in pursuance of Part IX of a company, if it is not registered as a limited company, or if, before its registration as a limited company, the liability of the shareholders was limited by some other Act of Parliament or any other Indian law or by an Act of Parliament of the United Kingdom, Royal charter or Letters Patent in force in India.

**571. Fees etc. paid to Registrar and other officers to be accounted for to Central Government.**—All fees, charges, and other sums paid to any Registrar, Assistant Registrar or other officer of the Central Government in pursuance of section 570 or any other provision of this Act shall be accounted for to the Central Government.

**572. Power of Central Government to reduce fees, charges, etc.**—

(1) The Central Government may, by order notified in the Official Gazette, reduce the amount of any fee, charge or other sum specified in any provision contained in this Act, as payable in respect of any matter, either to the Central Government or to any Registrar, Assistant Registrar or other officer of the Central Government; and thereupon such provision shall, during the period for which the order is in force, have effect as if the reduced fee had been substituted for the fee specified in such provision.

(2) Any order notified under sub-section (1) may, by a like order, be cancelled or varied at any time by the Central Government,

(3) Nothing in this section shall be deemed to affect the power of the Central Government under section 594 to alter any of the fees specified in Table B in Schedule I.

**573. Enforcement of duty of company to make returns to Registrar.**—(1) If a company, having made default in complying with any provision of this Act which requires it to file with, deliver or send to the Registrar any return, account or other document, or to give notice to him of any matter, fails to make good the default within fourteen days after the service of a notice on the company requiring it to do so, the Court may, on an application made to it by any member or creditor of the company or by the Registrar, make an order directing the company and any officer thereof to make good the default within such time as may be specified in the order.

(2) Any such order may provide that all costs of and incidental to the application shall be borne by the company or by any officers of the company responsible for the default.

(3) Nothing in this section shall be taken to prejudice the operation of any enactment imposing penalties on a company or its officers in respect of any such default as aforesaid.

## PART XIII

### GENERAL

#### *Application of Act to certain companies*

**574. Application of Act to insurance, banking, and other companies governed by special Acts.**—The provisions of this Act shall apply—

(a) to insurance companies, except in so far as the said provisions are inconsistent with the provisions of the Insurance Act, 1938 (IV of 1938);

- (b) to banking companies, except in so far as the said provisions are inconsistent with the provisions of the Banking Companies Act, 1949 (X of 1949) ;
- (c) to companies engaged in the generation or supply of electricity, except in so far as the said provisions are inconsistent with the provisions of the Electricity Supply Act, 1948 (LIV of 1948) ;
- (d) to any other company governed by any special Act for the time being in force, except in so far as the said provisions are inconsistent with the provisions contained in such special Act.

**575. Application of Act to companies in which Government has predominant interest.**—The Central Government may, by notification in the Official Gazette, direct that any of the provisions of this Act specified in the notification:—

- (a) shall not apply to any company in which not less than four-fifths of the paid-up share capital is held by the Central Government or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments; or
- (b) shall apply to any such company, only with such exceptions, modifications and adaptations as may be specified in the notification.

**576. Application of Act to non-trading companies with objects confined to one State.**—The powers conferred by this Act on the Central Government shall, in relation to companies with objects confined to a single State which are not trading corporations, be powers of the State Government.

#### *Offences*

**577. Cognizance of offences against Act to be only on complaint by Registrar, shareholder or Central Government.**—(1) No Court shall take cognizance of any offence against this Act (other than an offence against section 506, which is alleged to have been committed by any company or any officer thereof, except on the complaint in writing of the Registrar, or of a shareholder of the company, or of a person authorised by the Central Government in that behalf :

Provided that nothing in this sub-section shall apply to a prosecution by a company of any of its officers.

(2) Sub-section (1) shall not apply to any action taken by the liquidator of a company in respect of any offence alleged to have been committed in respect of any of the matters included in Part VII (sections 389 to 519) or in any other provision of this Act relating to the winding up of Companies.

(3) A liquidator of a company shall not be deemed to be an officer of the company, within the meaning of sub-section (1).

**578. Courts having jurisdiction to try offences.**—No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence against this Act.

**579. Offences punishable with fine triable summarily in Presidency-towns.**—If any offence against this Act is punishable with fine only and the offence is committed by any person within a Presidency-town, such person shall be punishable, upon summary conviction, by any Presidency Magistrate of the Presidency-town concerned.

**580. Offences against Act to be non-cognizable.**—Notwithstanding anything in the Code of Criminal Procedure, 1898 (V of 1898), every offence against this Act shall, for the purposes of the said Code, be deemed to be non-cognizable.

**581. Power of Court to order compensation to be paid in case of frivolous or vexatious prosecution.**—(1) In respect of any case instituted upon the complaint of a shareholder against the company or any officer thereof in pursuance of section 577, the provisions of section 250 of the Code of Criminal Procedure, 1898 (V of 1898), shall not apply; and the following provisions shall apply instead.

(2) If the Magistrate by whom any such case is heard discharges or acquits all or any of the accused, and is of the opinion that the accusation against them or any of them was frivolous or vexatious, the Magistrate may, by his order of discharge or acquittal, if the shareholder upon whose complaint the accusation was made is present, call upon him forthwith to show cause why he should not pay compensation to such accused or to each or any of such accused when there is more than one, or if such shareholder is not present, direct the issue of a summons to him to appear and show cause as aforesaid.

(3) The Magistrate shall record and consider any cause which such shareholder may show; and if the Magistrate is satisfied that the accusation was frivolous or vexatious, he may, for reasons to be recorded, direct that compensation to such amount as he may determine be paid by such shareholder to the accused or to each or any of them, not exceeding five thousand rupees in all.

(4) The Magistrate may, by the order directing payment of the compensation under sub-section (3), further order that, in default of payment, the shareholder ordered to pay such compensation shall suffer simple imprisonment for a term not exceeding six months.

(5) When any person is imprisoned under sub-section (4), the provisions of sections 68 and 69 of the Indian Penal Code, (Act XLV of 1860) shall, so far as may be, apply.

(6) No person who has been directed to pay compensation under this section shall, by reason of such order, be exempted from any civil or criminal liability in respect of the complaint made by him:

Provided that any amount paid to an accused person under this section shall be taken into account in awarding compensation to such person in any subsequent civil suit relating to the same matter.

(7) A complainant who has been ordered to pay compensation under sub-section (3) by a Magistrate may appeal from the order, in so far as the order relates to the payment of compensation, as if such complainant had been convicted on a trial by such Magistrate.

(8) Where an order for payment of compensation to an accused person is made, the compensation shall not be paid to him before the period allowed for the presentation of the appeal under sub-section (7) has elapsed; or, if an appeal is presented, before the appeal has been decided.

**582. Accused to be competent witness in prosecutions under Act.**—Notwithstanding anything in the Code of Criminal Procedure 1898 (Act V of 1898), in a prosecution for any offence against this Act. —

(a) an accused shall be a competent witness, to whom an oath may be administered; and he shall be liable to the same punishment for refusing

to answer questions put to him, or for giving false answers to them, as any other witness ; and

(b) where an accused does not appear as a witness, the Court may draw such inference from that fact as it thinks just.

**583. Application of fines.**—The Court imposing any fine under this Act may direct that the whole or any part thereof shall be applied in or towards payment of the costs of the proceedings, or in or towards the rewarding the person on whose information or at whose instance the fine is recovered.

**584. Production and inspection of books where offence suspected.**—(1) If on an application made to a Judge of a High Court in chambers by the Public Prosecutor of the State or by the Central Government, it is shown that there is reasonable cause to believe that any person has while an officer of a company, committed an offence in connection with the management of the company's affairs and that evidence of the commission of the offence is to be found in any books or papers of or under the control of the company, an order may be made—

- (i) authorising any person named therein to inspect the said books or papers or any of them for the purpose of investigating, and obtaining evidence of, the offence ; or
- (ii) requiring the managing agent or manager of the company or such other officer thereof as may be named in the order to produce the said books or papers or any of them to a person named in the order at a place so named.

(2) Sub-section (1) shall apply also in relation to any books or papers of a person carrying on the business of banking so far as they relate to the company's affairs, as it applies to any books or papers of or under the control of the company, except that no such order as is referred to in clause (ii) thereof shall be made by virtue of this sub-section.

(3) The decision of a Judge of the High Court on an application under this section shall not be appealable.

**585. Penalty for false statements.**—If in any return, report, certificate, balance sheet, prospectus, statement or other document, required by or for the purposes of any of the provisions of this Act, any person makes a statement false in any material particular, knowing it to be false, he shall, save as otherwise expressly provided in this Act, be punishable with imprisonment for a term which may extend to two years, and shall also be liable to fine.

**586. Penalty for false evidence.**—If any person intentionally gives false evidence—

- (a) upon any examination upon oath or solemn affirmation, authorised under this Act ; or
- (b) in any affidavit, deposition or solemn affirmation, in or about the winding up of any company under this Act, or otherwise in or about any matter arising under this Act ;

he shall be punishable with imprisonment for a term which may extend to seven years, and shall also be liable to fine.

**587. Penalty for wrongful withholding of property.**—(1) Any officer or employee of a company who—

- (a) wrongfully obtains possession of any property of a company, or

- (b) having any such property in his possession, wrongfully withholds it or knowingly applies it to purposes other than those expressed or directed in the articles and authorised by this Act,

shall, on the complaint of the company or any creditor or contributory thereof, be punishable with fine which may extend to one thousand rupees.

(2) The Court trying the offence may also order such officer or employee to deliver up or refund within a time to be fixed by the Court any such property wrongfully obtained or wrongfully withheld or knowingly misapplied, or in default, to suffer imprisonment for a term which may extend to two years.

**588. Penalty for improper use of word "Limited".**—If any person or persons trade or carry on business under any name or title of which the word "Limited" or any contraction or imitation of that word is the last word, that person or each of those persons shall, unless duly incorporated with limited liability, be punishable with fine which may extend to fifty rupees for every day upon which that name or title has been used.

### Legal Proceedings

**589. Power to require limited company to give security for costs.**—Where a limited company is plaintiff or petitioner in any suit or other legal proceeding, any Court having jurisdiction in the matter may, if there is reason to believe that the company will be unable to pay the costs of the defendant, if he is successful in his defence, require sufficient security to be given for those costs, and may stay all proceedings until the security is given.

**590. Power of Court to grant relief in certain cases.**—(1) If in any proceeding for negligence, default, breach of duty, misfeasance or breach of trust against an officer of a company, or a person employed by a company as auditor (whether he is or is not an officer of the company), it appears to the Court hearing the case that that officer or person is or may be liable in respect of the negligence, default, breach of duty, misfeasance or breach of trust, but that he has acted honestly and reasonably, and that having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused for the negligence, default, breach of duty, misfeasance or breach of trust, that Court may relieve him either wholly or partly, from his liability on such terms as the Court may think fit.

(2) Where any such officer or person aforesaid has reason to apprehend that any claim will or might be made against him in respect of any negligence, default, breach of duty, misfeasance or breach of trust, he may apply to the Court for relief, and the Court on any such application shall have the same power to relieve him as under this section it would have had if it had been a Court before which proceedings against that person for negligence, default, breach of duty, misfeasance or breach of trust had been brought.

(3) Where the managing agent of a company is a firm or body corporate every partner in the firm or every director of the body corporate, as the case may be, shall be deemed to be an officer of the company for the purposes of sub-sections (1) and (2).

### Reduction of fees payable to company

**591. Power of company to reduce fees, charges, etc. payable to it.**—(1) A company which is entitled to any specified fee, charge or other sum

by virtue of any provision contained in this Act or in its articles, may reduce the amount thereof to such extent as it thinks fit ; and thereupon such provision shall, so long as the reduction is in force, have effect as if the reduced amount had been substituted for the fee, charge or sum specified in such provision.

(2) Any reduction made under sub-section (1) may, at any time, be cancelled or varied by the company.

### **Delegation of powers and functions of Central Government**

**592. Delegation by Central Government of its powers and functions under Act.**—(1) The Central Government may, by notification in the Official Gazette, delegate any of its powers or functions under this Act to such authority or person, and subject to such conditions, restrictions and limitations, as may be specified in the notification.

(2) A copy of every notification issued under sub-section (1) shall, as soon as may be after it is issued, be placed before each House of Parliament.

### **Annual Report on Working of Act**

**593. Annual report by Central Government.**—The Central Government shall cause a general annual report on the working and administration of this Act to be prepared and laid before both Houses of Parliament.

### *Schedules, Forms and Rules*

**594. Power to alter or add to Schedules.**—(1) Subject to the provisions of this section, the Central Government may, by notification in the Official Gazette, alter or add to any of the regulations, rules, tables, forms and other provisions contained in any of the Schedules to this Act, except Schedules XI and XII.

(2) Any alteration or addition notified under sub-section (1) shall have effect as if enacted in this Act and shall come into force on the date of the notification, unless the notification otherwise directs:

Provided that no such alteration or addition to or in Table A of Schedule I shall apply to any company registered before the date of such alteration or addition.

**595. Forms in Schedule X to be used.**—The forms in Schedule X (as altered or added to from time to time in pursuance of the power conferred by section 594), or forms as near thereto as circumstances admit, shall, be used in all matters to which those forms refer.

**596. Power of Central Government to make rules.**—(1) In addition to the powers conferred by section 594, the Central Government may, by notification in the Official Gazette, make rules—

(a) for all or any of the matters which by this Act are to be, or may be prescribed by the Central Government ; and

(b) generally to carry out the purposes of this Act.

(2) Every rule so notified shall have effect as if enacted in this Act, and shall come into force on the date of the notification, unless the notification otherwise directs.

**597. Power of Supreme Court to make rules.**—(1) The Supreme Court, after consulting the High Courts,—

- (a) shall make rules providing for all matters relating to the winding up of companies which, by this Act, are to be prescribed except the matters reserved to the Central Government by sub-section (3) of section 512 ; and
- (b) may, from time to time, make rules consistent with the Code of Civil Procedure, 1908 (V of 1908)—
  - (i) as to the mode of proceedings to be had for winding up a company in High Courts and in Courts subordinate thereto;
  - (ii) for the voluntary winding up of companies, whether by members or by creditors;
  - (iii) for the holding of meetings of creditors and members in connection with proceedings under section 362;
  - (iv) for giving effect to the provisions of this Act as to the reduction of the capital and the sub-division of the shares of a company; and
  - (v) generally for all applications to be made to the Court under the provisions of this Act.

(2) Without prejudice to the generality of the foregoing power, the Supreme Court may, by such rules, enable or require all or any of the powers and duties conferred and imposed on the Court by this Act, in respect of the following matters, that is to say—

- (a) the holding and conducting of meetings to ascertain the wishes of creditors and contributories ;
- (b) the settling of lists of contributories and the rectifying of the register of members where required, and collecting and applying the assets;
- (c) the payment delivery, conveyance, surrender or transfer of money, property, books or papers to the liquidator ;
- (d) the making of calls ;
- (e) the fixing of a time within which debts and claims shall be proved ;

to be exercised or performed by the liquidator as an officer of the Court, and subject to the control of the Court:

Provided that the liquidator shall not, without the special leave of the Court, rectify the register of members or make any call.

(3) Until rules are made by the Supreme Court as aforesaid, all rules made by any High Court on the matters referred to in this section and in force at the commencement of this Act shall continue to be in force in so far as they are not inconsistent with the provisions of this Act.

*Repeals and of savings*

**598. Certain provisions of Act LII of 1951 in form set forth in Schedule XI to be in force for three years from commencement of Act.**—The provisions inserted in the Indian Companies Act, 1913 (VII of 1913) by sections 2, 3, 4, 5, 6, and 8 of the Indian Companies (Amendment) Act., 1951 (LI of 1951), in the modified form set forth in Schedule XI, shall continue to be in force for a period of three years from the commencement of this Act; and shall thereafter be repealed.



**599. Repeal of Acts specified in Schedule XII.**—(1) The enactments mentioned in Schedule XII are hereby repealed to the extent specified in the fourth column thereof.

**600. Saving of orders, rules etc., in force at Commencement of Act.**—Nothing in this Act shall affect any order, rule, regulation, appointment, conveyance, mortgage, deed, document or agreement made, fee directed, resolution passed, direction given, proceeding taken, instrument executed or issued, or thing done, under or in pursuance of any previous companies law; but any such order, rule, regulation, appointment, conveyance, mortgage, deed, document, agreement, fee, resolution, direction, proceeding, instrument or thing shall, if in force at the commencement of this Act, continue to be in force, and so far as it could have been made, directed, passed, given, taken, executed, issued or done under or in pursuance of this Act, shall have effect as if made, directed, passed, given, taken, executed, issued or done under or in pursuance of this Act.

**601. Saving of operation of section 138 of Act VII of 1913.**—Nothing in this Act shall affect the operation of section 138 of the Indian Companies Act, 1913 (VII of 1913), as respects inspectors appointed before, or as respects the continuation of an inspection begun by inspectors appointed before, the commencement of this Act; and the provisions of this Act shall apply to a report of inspectors appointed under the said section 138 as they apply to a report of inspectors appointed under section 220 or 222 of this Act.

**602. Saving of pending proceedings for winding up.**—The provisions with respect to winding up contained in this Act shall not apply to any company of which the winding up has commenced before the commencement of this Act; but every such company shall be wound up in the same manner and with the same incidents as if this Act had not been passed.

**603. Saving of prosecutions instituted by liquidator or Court under section 237 of Act VII of 1913.**—Nothing in this Act shall affect any prosecution instituted or ordered by the Court to be instituted under section 237 of the Indian Companies Act, 1913 (VII of 1913); and the Court shall have the same power of directing how any costs, charges, and expenses properly incurred in any such prosecution are to be defrayed as it would have had if this Act had not been passed.

**604. Construction of references to former enactments in documents.** Any document referring to any former enactment relating to companies shall be construed as referring to the corresponding enactment of this Act.

**605. Construction of "registrar of joint stock companies" in Act XXI of 1860.**—In sections 1 and 18 of the Societies Registration Act, 1860 (XXI of 1860), the words "registrar of joint stock companies" shall be construed to mean the Registrar under this Act.

**606. Appointment under previous companies laws to have effect as if made under Act.**—Any person appointed to any office under or by virtue of any previous companies law shall be deemed to have been appointed to that office under or by virtue of this Act.

**607. Former registration offices continued.**—The offices existing at the commencement of this Act for the registration of companies shall be continued as if they had been established under this Act.

**608. Registers under previous companies laws to be deemed to be part of registers under Act.**—Any register kept under the provisions of any previous companies law shall be deemed to be part of the register to be kept under the corresponding provisions of this Act.

**609. Funds and accounts under Act to be in continuation of funds and accounts under previous companies laws.**—All funds constituted and accounts kept under this Act shall be deemed to be in continuation of the corresponding funds constituted and accounts kept under the previous companies laws.

**610. Saving of incorporation under repealed Acts.**—Nothing in this Act shall affect the incorporation of any company registered under any enactment here by repealed.

**611. Saving of certain Tables under previous companies laws.**—Nothing in this Act, shall affect

- (a) Table B in the Schedule annexed to Act No. XIX of 1857, or any part thereof, so far as the same applies to any company existing at the commencement of this Act ;
- (b) Table A in the First Schedule annexed to the Indian Companies Act, 1882 (VI of 1882), or any part thereof, so far as the same applies to any company existing at the commencement of this Act ;
- (c) Table A in the first Schedule to the Indian Companies Act, 1913 (VII of 1913), either as originally contained in that Schedule or as altered in pursuance of section 151 of that Act, so far as the same applies to any company existing at the commencement of this Act.

**612. Section 6 of General clauses Act, 1897. (X of 1897) to apply in addition to sections 600 to 611 of Act.**—The mention of particular matters in sections 600 to 611 or in any other section of this Act shall not prejudice the general application of section 6 of the General Clauses Act, 1897 (X of 1897), with respect to the effect of repeals.

## THE SCHEDULES

## SCHEDULE I

[See sections 2 (1) and 24 (1)]

## TABLE A

**Regulations for management of a company limited by shares.***Interpretation.*

1. (1) In these regulations—

(a) “the Act” means the Companies Act, 1954.

(b) “the seal” means the common seal of the company.

(c) “section” means a section of the Companies Act, 1954.

(2) Unless the context otherwise requires, words or expressions contained in these regulations shall bear the same meaning as in the Act or any statutory modification thereof in force at the date at which these regulations become binding on the company.

(3) The General Clauses Act, 1897 (X of 1897), shall apply to the interpretation of these regulations as it applies to the interpretation of a Central Act.

*Share capital and variation of rights*

2. Subject to the provisions, if any, contained in the memorandum of association of the company, and without prejudice to any special rights previously conferred on the holders of any existing shares or class of shares in the company—

(a) preference shares may be issued with such rights as respects dividend and as respects capital, being rights consistent with sub-section (2) of section 79, as the company may, from time to time, by ordinary resolution determine; and

(b) where the Central Government has accorded its consent under section 81, shares in the company may be issued with such preferred, deferred, or other special rights or such restrictions whether in regard to dividend, voting, return of capital or otherwise as the company may, from time to time, by special resolution, determine, consistently with the terms subject to which the Central Government accorded its consent.

3. Subject to the provisions of section 74, any preference shares may, with the sanction of an ordinary resolution, be issued on the terms that they are, or at the option of the company are liable, to be redeemed on such terms and in such manner as the company before the issue of the shares may, by special resolution, determine.

4. (1) If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may, subject to the provisions of sections 99 and 100, and whether or not the company is being wound up, be varied with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of a special resolution passed at a separate general meeting of the holders of the shares of that class.

(2) To every such separate general meeting, the provisions of these regulations relating to general meetings shall *mutatis mutandis* apply, but so that the necessary quorum shall be two persons at least holding or representing by proxy one-third of the issued shares of the class in question.

5. The rights conferred upon the holders of the shares of any class issued with preferred or other rights shall not, unless otherwise expressly provided by the terms of issue of the shares of that class, be deemed to be varied by the creation or issue of further shares ranking *pari passu* therewith.

6. (1) The company may exercise the powers of paying commissions conferred by section 70, provided that the rate per cent or the amount of the commission paid or agreed to be paid shall be disclosed in the manner required by the said section.

(2) The rate of the commission shall not exceed the rate of 10 per cent of the price at which the shares in respect whereof the same is paid are issued or an amount equal to 10 per cent of such price, as the case may be.

(3) The commission may be satisfied by the payment of cash or the allotment of fully or partly paid shares or partly in the one way and partly in the other.

(4) The company may also, on any issue of shares, pay such brokerage as may be lawful.

7. Except as required by law, no person shall be recognised by the company as holding any share upon any trust, and the company shall not be bound by, or be compelled in any way to recognise (even when having notice thereof), any equitable, contingent, future or partial interest in any share or any interest in any fractional part of a share or (except only as by these regulations or by law otherwise provided) any other rights in respect of any share except an absolute right to the entirety thereof in the registered holder.

8. (1) Every person whose name is entered as a member in the register of members shall be entitled to receive within three months after allotment or registration of transfer (or within such other period as the conditions of issue shall provide)—

(a) one certificate for all his shares without payment, or

(b) several certificates, each for one or more of his shares, upon payment of one rupee for every certificate after the first.

(2) Every certificate shall be under the seal and shall specify the shares to which it relates and the amount paid up thereon.

(3) In respect of any share or shares held jointly by several persons, the company shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one of several joint holders shall be sufficient delivery to all such holders.

9. If a share certificate is defaced, lost or destroyed, it may be renewed on payment of such fee, if any, not exceeding eight annas, and on such terms, if any, as to evidence and indemnity and the payment of out of pocket expenses incurred by the company in investigating evidence, as the directors think fit.

*Lien.*

10. (1) The company shall have a first and paramount lien—

(a) on every share (not being a fully-paid share), for all moneys (whether presently payable or not) called or payable at a fixed time in respect of that share, and

(b) on all shares (not being fully-paid shares) standing registered in the name of a single person, for all moneys presently payable by him or his estate to the company:

Provided that the directors may at any time declare any share to be wholly or in part exempt from the provisions of this clause.

(2) The company's lien, if any, on a share shall extend to all dividends payable thereon.

11. The company may sell, in such manner as the directors think fit, any shares on which the company has a lien :

Provided that no sale shall be made—

(a) unless a sum in respect of which the lien exists is presently payable, or

(b) until the expiration of fourteen days after a notice in writing stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the share or the person entitled thereto by reason of his death or insolvency.

12. (1) To give effect to any such sale, the directors may authorise some person to transfer the shares sold to the purchaser thereof.

(2) The purchaser shall be registered as the holder of the shares comprised in any such transfer.

(3) The purchaser shall not be bound to see to the application of the purchase money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

13. (1) The proceeds of the sale shall be received by the company and applied in payment of such part of the amount in respect of which the lien exists as is presently payable.

(2) The residue, if any, shall, subject to a like lien for sums not presently payable as existed upon the shares before the sale, be paid to the person entitled to the shares at the date of the sale.

*Calls on shares.*

14. (1) The directors may, from time to time, make calls upon the members in respect of any moneys unpaid on their shares (whether on account of the nominal value of the shares or by way of premium) and not by the conditions of allotment thereof made payable at fixed times :

Provided that no call shall exceed one-fourth of the nominal value of the share or be payable at less than one month from the date fixed for the payment of the last preceding call.

(2) Each member shall, subject to receiving at least fourteen days' notice specifying the time or times and place of payment, pay to the company at the time or times and place so specified the amount called on his shares.

(3) A call may be revoked or postponed at the discretion of the directors.

15. A call shall be deemed to have been made at the time when the resolution of the directors authorising the call was passed and may be required to be paid by instalments.

16. The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.

17. (1) If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest thereon from the day appointed for payment thereof to the time of actual payment at 5 per cent per annum or at such lower rate, if any, as the directors may determine.

(2) The directors shall be at liberty to waive payment of any such interest wholly or in part.

18. (1) Any sum which by the terms of issue of a share becomes payable on allotment or at any fixed date, whether on account of the nominal value of the share or by way of premium, shall, for the purposes of these regulations, be deemed to be a call duly made and payable on the date on which by the terms of issue such sum becomes payable.

(2) In case of non-payment of such sum, all the relevant provisions of these regulations as to payment of interest and expenses, forfeiture or otherwise shall apply as if such sum had become payable by virtue of a call duly made and notified.

19. The directors—

(a) may, if they think fit, receive from any member willing to advance the same, all or any part of the moneys uncalled and unpaid upon any shares held by him ; and

(b) upon all or any of the moneys so advanced, may (until the same would, but for such advance, become presently payable) pay interest at such rate not exceeding, unless the company in general meeting shall otherwise direct, six per cent per annum, as may be agreed upon between the directors and the member paying the sum in advance.

#### *Transfer of shares.*

20. (1) The instrument of transfer of any share in the company shall be executed by or on behalf of both the transferor and transferee.

(2) The transferor shall be deemed to remain a holder of the share until the name of the transferee is entered in the register of members in respect thereof.

21. Shares in the company may be transferred in any usual or common form or any other form which the directors may approve or in the following form :—

"I, A. B. of \_\_\_\_\_, in consideration of the sum  
of rupees \_\_\_\_\_ paid to me by C. D. of.....  
(hereinafter called "the transferee"), do hereby transfer to the transferee the  
share [or shares] numbered.....to .....  
inclusive, in the undertaking called the..... Company, Limited, to hold  
unto the said transferee, his executors, administrators and assigns, subject to

the several conditions on which I held the same immediately before the execution hereof ; and I, the transferee, do hereby agree to take the said share (or shares) subject to the conditions aforesaid.

As witness our hands this  
day of

Witness to the signatures of, etc."

22. The directors may, subject to the right of appeal conferred by section 105, decline to register—

- (a) the transfer of a share, not being a fully paid share, to a person of whom they do not approve, or
- (b) any transfer of shares on which the company has a lien.

23. The directors may also decline to recognise any instrument of transfer unless —

- (a) a fee of two rupees is paid to the company in respect thereof ;
- (b) the instrument of transfer is accompanied by the certificate of the shares to which it relates, and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer ; and
- (c) the instrument of transfer is in respect of only one class of shares.

24. The registration of transfers may be suspended at such times and for such periods as the directors may from time to time determine :

Provided that such registration shall not be suspended for more than forty-five days in any year.

25. The company shall be entitled to charge a fee not exceeding two rupees on the registration of every probate, letters of administration, certificate of death or marriage, power of attorney, or other instrument.

#### *Transmission of shares*

26. (1) On the death of a member, the survivor or survivors where the member was a joint holder, and his legal representatives where he was a sole holder, shall be the only persons recognised by the company as having any title to his interest in the shares.

(2) Nothing in clause (1) shall release the estate of a deceased joint holder from any liability in respect of any share which had been jointly held by him with other persons.

27. (1) Any person becoming entitled to a share in consequence of the death or insolvency of a member may, upon such evidence being produced as may from time to time properly be required by the directors and subject as hereinafter provided, elect, either—

- (a) to be registered himself as holder of the share, or
- (b) to make such transfer of the share as the deceased or insolvent member could have made.

(2) The directors shall, in either case, have the same right to decline or suspend registration as they would have had, if the deceased or insolvent member had transferred the share before the death or insolvency.

28. (1) If the person so becoming entitled shall elect to be registered as holder of the share himself, he shall deliver or send to the company a notice in writing signed by him stating that he so elects.

(2) If the person aforesaid shall elect to transfer the share, he shall testify his election by executing a transfer of the share.

(3) All the limitations, restrictions and provisions of these regulations relating to the right to transfer and the registration of transfers of shares shall be applicable to any such notice or transfer as aforesaid as if the death or insolvency of the member had not occurred and the notice or transfer were a transfer signed by that member.

29. A person becoming entitled to a share by reason of the death or insolvency of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, before being registered as a member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company :

Provided that the directors may at any time give notice requiring any such person to elect either to be registered himself or to transfer the share, and if the notice is not complied with within ninety days, the directors may thereafter withhold payment of all dividends, bonuses or other moneys payable in respect of the share, until the requirements of the notice have been complied with.

#### *Forfeiture of shares*

30. If a member fails to pay any call or instalment of a call on the day appointed for payment thereof, the directors may, at any time thereafter during such time as any part of the call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.

31. The notice aforesaid shall—

(a) name a further day (not earlier than the expiration of fourteen days, from the date of service of the notice) on or before which the payment required by the notice is to be made ; and

(b) state that, in the event of non-payment on or before the day so named, the shares in respect of which the call was made will be liable to be forfeited.

32. If the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect.

33. (1) A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the directors think fit.

(2) At any time before a sale or disposal as aforesaid, the directors may cancel the forfeiture on such terms as they think fit.

34. (1) A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding the forfeiture, remain liable to pay to the company all moneys which, at the date of forfeiture, were presently payable by him to the company in respect of the shares.



(2) The liability of such person shall cease if and when the company shall have received payment in full of all such moneys in respect of the shares.

**35.** (1) A duly verified declaration in writing that the declarant is a director, the managing agent, the manager or the secretary of the company, and that a share in the company has been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share.

(2) The company may receive the consideration, if any, given for the share on any sale or disposal thereof and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of.

(3) The transferee shall thereupon be registered as the holder of the share.

(4) The transferee shall not be bound to see to the application of the purchase money, if any, nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.

**36.** The provisions of these regulations as to forfeiture shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the nominal value of the share or by way of premium, as if the same had been payable by virtue of a call duly made and notified.

#### *Conversion of shares into stock*

**37.** The company may, by ordinary resolution—

(a) convert any paid up shares into stock ; and

(b) reconvert any stock into paid up shares of any denomination.

**38.** (1) The holders of stock may transfer the same or any part thereof in the same manner as, and subject to the same regulations, under which, the shares from which the stock arose might before the conversion have been transferred, or as near thereto as circumstances admit :

Provided that the directors may from time to time fix the minimum amount of stock transferable, so however that such minimum shall not exceed the nominal amount of the shares from which the stock arose.

**39.** The holders of stock shall, according to the amount of stock held by them, have the same rights, privileges and advantages as regards dividends, voting at meetings of the company, and other matters, as if they held the shares from which the stock arose; but no such privilege or advantage (except participation in the dividends and profits of the company and in the assets on winding up) shall be conferred by an amount of stock which would not, if existing in shares, have conferred that privilege or advantage.

**40.** Such of the regulations of the company (other than those relating to share warrants), as are applicable to paid up shares shall apply to stock and the words "share" and "share holder" in those regulations shall include "stock" and "stock-holder" respectively.

#### *Share-warrants*

**41.** The company may issue share warrants subject to, and in accordance with, the provisions of sections 108 and 109 ; and accordingly the directors may in their discretion, with respect to any share which is fully paid up, on application in writing signed by the person registered as holder of the share,

and authenticated by such evidence (if any) as the directors may, from time to time, require as to the identity of the person signing the request, and on receiving the certificate (if any) of the share, and the amount of the stamp duty on the warrant and such fee as the directors may from time to time require, issue, a share warrant.

42. (1) The bearer of a share warrant may at any time deposit the warrant at the office of the company, and so long as the warrant remains so deposited, the depositor shall have the same right of signing a requisition for calling a meeting of the company, and of attending and voting and exercising the other privileges of a member at any meeting held after the expiration of two clear days from the time of deposit, as if his name were inserted in the register of members as the holder of the shares included in the deposited warrant.

(2) Not more than one person shall be recognised as depositor of the share warrant.

(3) The company shall, on two days' written notice, return the deposited share warrant to the depositor.

43. (1) Subject as herein otherwise expressly provided, no person shall, as bearer of a share warrant, sign a requisition for calling a meeting of the company, or attend, or vote or exercise any other privilege of a member at a meeting of the company, or be entitled to receive any notices from the company.

(2) The bearer of a share warrant shall be entitled in all other respects to the same privileges and advantages as if he were named in the register of members as the holder of the shares included in the warrant, and he shall be a member of the company.

44. The directors may, from time to time, make rules as to the terms on which (if they shall think fit) a new share warrant or coupon may be issued by way of renewal in case of defacement, loss or destruction.

#### *Alteration of Capital*

45. The company may, from time to time, by ordinary resolution increase the share capital by such sum, to be divided into shares of such amount, as may be specified in the resolution.

46. The company may, by ordinary resolution,—

- (a) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares ;
- (b) sub-divide its existing shares or any of them into shares of smaller amount than is fixed by the memorandum of association, subject, nevertheless, to the provisions of clause (d) of sub-section (1) of section 86 ;
- (c) cancel any shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person.

47. The company may, by special resolution, reduce in any manner and with, and subject to, any incident authorised and consent required, by law—

- (a) its share capital ;
- (b) any capital redemption reserve fund ; or
- (c) any share premium account.

*General meetings*

48. All general meetings other than annual general meetings shall be called extraordinary general meetings.

49. (1) The directors may, whenever they think fit, call an extraordinary general meeting.

(2) If at any time there are not within India directors capable of acting who are sufficient in number to form a quorum, any director or any two members of the company may call an extraordinary general meeting, in the same manner as nearly as possible, as that in which such a meeting may be called by the directors.

*Proceedings at general meetings*

50. (1) No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business.

(2) Save as herein otherwise provided, five members present in person in the case of a public company, and two members present in person in the case of a private company, shall be a quorum.

(3) If within half an hour from the time appointed for holding the meeting a quorum is not present, the meeting, if called upon the requisition of members, shall be dissolved.

(4) In any other case, the meeting shall stand adjourned to the same day in the next week at the same time and place or to such other day and at such other time and place as the directors may determine.

(5) If at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the members present shall be a quorum.

51. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company.

52. If there is no such chairman, or if he is not present within fifteen minutes after the time appointed for holding the meeting, or is unwilling to act as chairman of the meeting, the directors present shall elect one of their number to be chairman of the meeting.

53. If at any meeting no director is willing to act as chairman or if no director is present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose one of their number to be chairman of the meeting.

54. (1) The chairman may, with the consent of any meeting at which a quorum is present and shall if so directed by the meeting, adjourn the meeting from time to time and from place to place.

(2) No business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

(3) When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.

(4) Save as aforesaid, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

**55.** In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place, or at which the poll is demanded, shall be entitled to a second or casting vote.

**56.** Any business other than that upon which a poll has been demanded may be proceeded with, pending the taking of the poll.

*Votes of members*

**57.** (1) Subject to any rights or restrictions for the time being attached to any class or classes of shares —

(a) On a show of hands, every member present in person shall have one vote, and

(b) On a poll, the voting rights of members shall be as laid down in section 80.

**58.** In the case of joint holders, the vote of the senior who tenders a vote whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders.

For this purpose, seniority shall be determined by the order in which the names stand in the register of members.

**59.** A member of unsound mind, or in respect of whom an order has been made by any Court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee or other legal guardian, and any such committee or guardian may, on a poll, vote by proxy.

**60.** No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the company have been paid.

**61.** (1) No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered, and every vote not disallowed at such meeting shall be valid for all purposes.

(2) Any such objection made in due time shall be referred to the chairman of the meeting, whose decision shall be final and conclusive.

**62.** The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority, shall be deposited at the registered office of the company not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than 24 hours before the time appointed for the taking of the poll; and in default the instrument of proxy shall not be treated as valid.

**63.** An instrument appointing a proxy shall be in either of the forms in Schedule IX to the Act or a form as near thereto as circumstances admit.

**64.** A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or insanity of the principal or the revocation of the proxy or of the authority under which the proxy was executed, or the transfer of the shares in respect of which the proxy is given :

Provided that no intimation in writing of such death, insanity, revocation or transfer shall have been received by the company at its office before the commencement of the meeting or adjourned meeting at which the proxy is used.

*Directors*

65. The number of the directors and the names of the first directors shall be determined in writing by the subscribers of the memorandum of association or a majority of them.

66. (1) The remuneration of the directors shall, in so far as it consists of a monthly payment, be deemed to accrue from day to day.

(2) In addition to the remuneration payable to them in pursuance of the Act, the directors may be paid all travelling, hotel and other expenses properly incurred by them

(a) in attending and returning from meetings of the directors or any committee of the directors or general meetings of the company ; or

(b) in connection with the business of the company.

67. The qualification of a director shall be the holding of at least one share in the company.

68. The directors may pay all expenses incurred in getting up and registering the company.

69. The company may exercise the powers conferred by section 45 with regard to having an official seal for use abroad, and such powers shall be vested in the directors.

70. The company may exercise the powers conferred upon the company by sections 150 and 151 with regard to the keeping of a foreign register, and the directors may (subject to the provisions of those sections) make and vary such regulations as they may think fit respecting the keeping of any such register.

71. All cheques, promissory notes, drafts, hundis, bills of exchange and other negotiable instruments, and all receipts for moneys paid to the company, shall be signed, drawn, accepted, endorsed, or otherwise executed, as the case may be, by the managing agent of the company, or where there is no managing agent, by such person and in such manner as the directors shall from time to time by resolution determine.

72. Every director present at any meeting of directors or of a committee of directors shall sign his name in a book to be kept for that purpose.

73. (1) The directors shall have power at any time, and from time to time, to appoint a person as an additional director who shall hold office until the next following general meeting.

(2) Such person shall however be eligible for appointment by the company at that meeting as a director, after the meeting has, if necessary, increased the number of the directors.

*Proceedings of Directors*

74. (1) The directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings, as they think fit.

(2) A director may, and the managing agent, manager or secretary on the requisition of a director shall, at any time, summon a meeting of the directors.

75. (1) Questions arising at any meeting of the directors shall be decided by a majority of votes.

(2) In case of an equality of votes, the chairman shall have a second or casting vote.

76. The continuing directors may act notwithstanding any vacancy in their body; but, if and so long as their number is reduced below the quorum fixed by the Act for a meeting of directors, the continuing directors or director may act for the purpose of increasing the number of directors to that number, or of summoning a general meeting of the company, but for no other purpose.

77. (1) The directors may elect a chairman of their meetings and determine the period for which he is to hold office.

(2) If no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the meeting, the directors present may choose one of their number to be chairman of the meeting.

78. (1) The directors may, subject to the provisions of the Act, delegate any of their powers to committees consisting of such member or members of their body as they think fit.

(2) Any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on it by the directors.

79. (1) A committee may elect a chairman of its meetings.

(2) If no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the meeting, the members present may choose one of their number to be chairman of the meeting.

80. (1) A committee may meet and adjourn as it thinks proper.

(2) Questions arising at any meeting of a committee shall be determined by a majority of votes of the members present, and in case of an equality of votes, the chairman shall have a second or casting vote.

81. All acts done by any meeting of the directors or of a committee of directors, or by any person acting as a director, shall, notwithstanding that it may be afterwards discovered that there was some defect in the appointment of any one or more of such directors or of any person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such director or such person had been duly appointed and was qualified to be a director.

82. Save as otherwise expressly provided in the Act, a resolution in writing, signed by all the directors or all the members of a committee of directors for the time being entitled to receive notice of a meeting of the directors or committee of directors, shall be as valid and effectual as if it had been passed at a meeting of the directors or committee of directors, duly convened and held.

#### *Manager or Secretary*

83. (1) A manager or secretary may be appointed by the directors for such term, at such remuneration and upon such conditions as they may think fit; and any manager or secretary so appointed may be removed by them.

(2) A director may be appointed as manager or secretary.

84. A provision of the Act or these regulations requiring or authorising a thing to be done by or to a director and the manager or secretary shall not be satisfied by its being done by or to the same person acting both as director and as, or in place of, the manager or secretary.

### *The Seal*

85. (1) The directors shall provide for the safe custody of the seal.

(2) The seal of the company shall not be affixed to any instrument except by the authority of a resolution of the board of directors or of a committee of directors authorised by the directors in that behalf, and except in the presence of at least two directors and of the secretary or such other person as the directors may appoint for the purpose; and those two directors and secretary or other person as aforesaid shall sign every instrument to which the seal of the company is so affixed in their presence.

### *Dividends and Reserve*

86. The company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the directors.

87. The directors may from time to time pay to the members such *interim* dividends as appear to the directors to be justified by the profits of the company.

88. (1) The directors may, before recommending any dividend, set aside out of the profits of the company such sums as they think proper as a reserve or reserves which shall, at the discretion of the directors, be applicable for any purpose to which the profits of the company may be properly applied, including provision for meeting contingencies or for equalising dividends; and pending such application, may, at the like discretion, either be employed in the business of the company or be invested in such investments (other than shares of the company) as the directors may, from time to time, think fit.

(2) The directors may also carry forward any profits which they may think prudent not to divide, without setting them aside as a reserve.

89. (1) Subject to the rights of persons, if any, entitled to shares with special rights as to dividends, all dividends shall be declared and paid according to the amounts paid or credited as paid on the shares in respect whereof the dividend is paid, but if and so long as nothing is paid upon any of the shares in the company, dividends may be declared and paid according to the amounts of the shares.

(2) No amount paid or credited as paid on a share in advance of calls shall be treated for the purposes of this regulation as paid on the share.

(3) All dividends shall be apportioned and paid proportionately to the amounts paid or credited as paid on the shares during any portion or portions of the period in respect of which the dividend is paid; but if any share is issued on terms providing that it shall rank for dividend as from a particular date, such share shall rank for dividend accordingly.

90. The directors may deduct from any dividend payable to any member all sums of money, if any, presently payable by him to the company on account of calls or otherwise in relation to the shares of the company.

91. (1) Any general meeting declaring a dividend or bonus may direct payment of such dividend or bonus, wholly or partly, by the distribution of specific assets ; and in particular of paid up shares, debentures or debenture stock of any other company or in any one or more of such ways ; and the directors shall give effect to the resolution of the meeting.

(2) Where any difficulty arises in regard to such distribution, the directors may settle the same as they think expedient, and in particular may issue fractional certificates and fix the value for distribution of such specific assets or any part thereof and may determine that cash payments shall be made to any members upon the footing of the value so fixed in order to adjust the rights of all parties, and may vest any such specific assets in trustees as may seem expedient to the directors.

92. (1) Any dividend, interest or other moneys payable in cash in respect of shares may be paid by cheque or warrant sent through the post directed to the registered address of the holder or, in the case of joint holders, to the registered address of that one of the joint holders who is first named on the register of members or to such person and to such address as the holder or joint holders may in writing direct.

(2) Every such cheque or warrant shall be made payable to the order of the person to whom it is sent.

93. Any one of two or more joint holders of a share may give effectual receipts for any dividends, bonuses or other moneys payable in respect of such share.

94. Notice of any dividend that may have been declared shall be given to the persons entitled to share therein in the manner mentioned in the Act

95. No dividend shall bear interest against the company.

#### *Accounts*

96. (1) The directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations, the accounts and books of the company or any of them shall be open to the inspection of members not being directors.

(2) No member (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by law or authorised by the directors or by the company in general meeting.

#### *Capitalisation of profits*

97. (1) The company in general meeting may, upon the recommendation of the directors, resolve—

(a) that it is desirable to capitalise any part of the amount for the time being standing to the credit of any of the company's reserve accounts or to the credit of the profit and loss account or otherwise available for distribution, and

(b) that such sum be accordingly set free for distribution in the manner specified in clause (2) amongst the members who would have been entitled thereto, if distributed by way of dividend and in the same proportions,



(2) The sum aforesaid shall not be paid in cash but shall be applied, subject to the provision of clause (3), either in or towards—

- (i) paying up any amounts for the time being unpaid on any shares held by such members respectively, or
- (ii) paying up in full, unissued shares or debentures of the company to be allotted and distributed, credited as fully paid up, to and amongst such members in the proportions aforesaid, or
- (iii) partly in the one way and partly in the other.

(3) A share premium account and a capital redemption reserve fund may, for the purposes of this regulation, only be applied in the paying up of unissued shares to be issued to members of the company as fully paid bonus shares.

(4) The directors shall give effect to the resolution passed by the company in pursuance of this regulation.

98. (1) Whenever such a resolution as aforesaid shall have been passed, the directors shall—

- (a) make all appropriations and applications of the undivided profits resolved to be capitalised thereby, and all allotments and issues of fully paid shares or debentures, if any, and
- (b) generally do all acts and things required to give effect thereto.

(2) The directors shall have full power—

- (a) to make such provision by the issue of fractional certificates or by payment in cash or otherwise as they think fit, for the case of shares or debentures becoming distributable in fractions; and also
- (b) to authorise any person to enter, on behalf of all the members entitled thereto, into an agreement with the company providing for the allotment to them respectively, credited as fully paid up, of any further shares or debentures to which they may be entitled upon such capitalisation, or (as the case may require) for the payment up by the company on their behalf, by the application thereto of their respective proportions of the profits resolved to be capitalised, of the amounts or any part of the amounts remaining unpaid on their existing shares.

(3) Any agreement made under such authority shall be effective and binding on all such members.

#### *Winding up*

99. (1) If the company shall be wound up, the liquidator may, with the sanction of a special resolution of the company and any other sanction required by the Act, divide amongst the members in specie or kind the whole or any part of the assets of the company, whether they shall consist of property of the same kind or not.

(2) For the purpose aforesaid, the liquidator may set such value as he deems fair upon any property to be divided as aforesaid and may determine how such division shall be carried out as between the members or different classes of members.

(3) The liquidator may, with the like sanction, vest the whole or any part of such assets in trustees upon such trusts for the benefit of the contributories

as the liquidator, with the like sanction, shall think fit, but so that no member shall be compelled to accept any shares or other securities whereon there is any liability.

### *Indemnity*

100. Every officer or agent for the time being of the company shall be indemnified out of the assets of the company against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in connection with any application under section 590 in which relief is granted to him by the Court.

### TABLE B

(See sections 533 and 570).

#### Table of fees to be paid to the Registrar

##### 1. *By a company having a share capital*

	Rs.	A.	P.
1. For registration of a company whose nominal share capital does not exceed Rs. 20,000, a fee of ...	40	0	0
2. For registration of a company whose nominal share capital exceeds Rs. 20,000, the above fee of forty rupees, with the following additional fees regulated according to the amount of nominal capital:—			
For every 10,000 rupees of nominal share capital, or part of 10,000 rupees, after the first 20,000 rupees up to 50,000 rupees ...	20	0	0
For every 10,000 rupees of nominal share capital, or part of 10,000 rupees, after the first 50,000 rupees up to 1,00,000 rupees ..	5	0	0
For every 10,000 rupees of nominal share capital, or part of 10,000 rupees, after the first 1,00,000 rupees ...	1	0	0
3. For registration of any increase of share capital made after the first registration of the company, the same fees per 10,000 rupees or part of 10,000 rupees, as would have been payable if such increased share capital had formed part of the original share capital at the time of registration:			

Provided that no company shall be liable to pay in respect of nominal share capital on registration, or afterwards, any greater amount of fees than 1,000 rupees, taking into account, in the case of fees payable on an increase of share capital after registration, the fees paid on registration.

4. For registration of any existing company, except such companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee as is charged for registering a new company.

5. For filing or registering any document by this Act required or authorised to be filed or registered, other than—

(a) the memorandum or the abstract required to be filed with the Registrar by a receiver, or

(b) the statement required to be filed with the Registrar by the liquidator in a winding up  
a fee of .. .. . 5-0-0

6. For making a record of or registering any fact by this Act required or authorised to be recorded or registered by the Registrar, a fee of .. .. . 5-0-0

II. *By a company not having a share capital*

7. For registration of a company whose number of members as stated in the articles of association, does not exceed 20, a fee of 40-0-0

8. For registration of a company whose number of members as stated in the articles of association, exceeds 20 but does not exceed 100, a fee of .. .. . 100-0-0

9. For registration of a company whose number of members as stated in the articles of association, exceeds 100, but is not stated to be unlimited, the above fee of Rs. 100 with an additional Rs. 5 for every 50 members, or less number than 50 members, after the first 100.

10. For registration of a company in which the number of members is stated in the articles of association to be unlimited, a fee of .. .. . 400-0-0

11. For registration of any increase on the number of members made after the registration of the company, the same fee as would have been payable in respect of such increase, if such increase had been stated in the articles of association at the time of registration:

Provided that no company shall be liable to pay on the whole a greater fee than Rs. 400 in respect of its number of members, taking into account the fee paid on the first registration of the company.

12. For registration of any existing company except such companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee as is charged for registering a new company.

13. For filing or registering any document by this Act required or authorised to be filed or registered with the Registrar other than—

(a) the memorandum or the abstract required to be filed with the Registrar by a receiver, or

(b) the statement required to be filed with the Registrar by the liquidator in a winding up,

a fee of .. .. . 5-0-0

14. For making a record of or registering any fact by this Act required or authorised to be recorded or registered by the Registrar, a fee of .. .. . 5-0-0

## SCHEDULE II

[See sections 39(2) (a) and (51).]

**Matters to be specified in Prospectus and Reports to be set out therein****Part I****MATTERS TO BE SPECIFIED**

1. (1) Save as provided in clause 27 the contents of the memorandum with the names, descriptions and addresses of the signatories and the number of shares subscribed for by them.

(2) The number of founders, or management or deferred shares, if any, and the nature and extent of the interest of the holders in the property and profits of the company.

(3) The number of redeemable preference shares intended to be issued with the date of redemption or, where no date is fixed, the period of notice required and the proposed method of redemption.

2. The number of shares, if any, fixed by the articles as the qualification of a director, and any provision in the articles as to the remuneration of the directors whether for their services to the company as directors, managing directors or otherwise.

3. (1) The names, descriptions and addresses of—

- (a) the directors or proposed directors;
- (b) the managing director or proposed managing director, if any;
- (c) the managing agent or proposed managing agent, if any ;
- (d) the manager or proposed manager, if any.

(2) Any provision in the articles or in any contract which has been entered into as to the appointment of a managing director, managing agent or manager, the remuneration payable to him, and the compensation, if any, payable to him for loss of office.

4. In the case of a company managed by a managing agent which is a body corporate, the subscribed capital of that body.

5. Where shares are offered to the public for subscription, particulars as to—

- (a) the minimum amount which, in the opinion of the directors arrived at after due inquiry, must be raised by the issue of those shares in order to provide the sums, or, if any part thereof is to be defrayed in any other manner, the balance of the sums, required to be provided in respect of each of the following heads and distinguishing the amount required under each head :—
  - (i) the purchase price of any property purchased or to be purchased which is to be defrayed in whole or in part out of the proceeds of the issue ;
  - (ii) any preliminary expenses payable by the company, and any commission so payable to any person in consideration of his agreeing to subscribe for, or of his procuring or agreeing to procure subscriptions for, any shares in the company ;

- (iii) the repayment of any moneys borrowed by the company in respect of any of the foregoing matters ;
- (iv) working capital ;
- (v) any other expenditure, stating the nature and purpose thereof and the estimated amount in each case ; and
- (b) the amounts to be provided in respect of the matters aforesaid otherwise than out of the proceeds of the issue and the sources out of which those amounts are to be provided.

6. The time of the opening of the subscription lists.

7. The amount payable on application and allotment on each share, and in the case of a second or subsequent offer of shares, the amount offered for subscription on each previous allotment made within the two preceding years, the amount actually allotted, and the amount, if any, paid on the shares so allotted.

8. The substance of any contract or arrangement or proposed contract or arrangement, whereby any option or preferential right of any kind has been or is proposed to be given to any person to subscribe for any shares in or debentures of a company, giving the number, description and amount of any such shares or debentures and including the following particulars of the option or right :—

- (a) the period during which the option or right is exercisable,
- (b) the price to be paid for shares or debentures subscribed for under the option or right,
- (c) the consideration, if any, given or to be given for the option or right or for the right thereto,
- (d) the names, descriptions, and addresses of the persons to whom the option or right or the right thereto was given or, if given to existing share-holders or debenture holders as such, the description and numbers of the relevant shares or debentures,
- (e) any other material fact or circumstance relevant to the grant of the option or right.

*Explanation.*—Subscribing for shares or debentures shall for the purposes of this clause, include acquiring them from a person to whom they have been allotted or agreed to be allotted with a view to his offering them for sale.

9. The number, description, and amount of shares and debentures which within the two preceding years have been issued, or agreed to be issued, as fully or partly paid up otherwise than in cash, and in the latter case the extent to which they are so paid up, and in either case the consideration for which those shares or debentures have been issued or agreed to be issued.

10. The amount payable by way of premium, if any, on each share which has been or is to be issued, stating the dates of issue and, where some shares have been or are to be issued at a premium and other shares of the same class at a lower premium, or at par or at a discount, the reasons for the differentiation and how any premiums received have been or are to be disposed of.

11. Where any issue of shares or debentures is underwritten the names of the under-writers, and the opinion of the directors that the resources of the under-writers are sufficient to discharge the under-writing obligations.

12. (1) As respects any property to which this clause applies—

- (a) the names, descriptions and addresses of the vendors ;
- (b) the amount paid or payable in cash, shares or debentures to the vendor and, where there is more than one separate vendor, or the company is a sub-purchaser, the amount so paid or payable to each vendor, specifying separately the amount, if any, paid or payable for goodwill ;
- (c) the nature of the title or interest in such property acquired or to be acquired by the company ;
- (d) short particulars of every transaction relating to the property completed within the two preceding years, in which any vendor of the property to the company or any person who is, or was at the time of the transaction, a promoter or a director or proposed director of the company had any interest, direct or indirect, giving the date of the transaction and the name of such promoter, director or proposed director and stating the amount payable by or to such vendor, promoter, director or proposed director in respect of the transaction.

(2) The property to which sub-clause (1) applies is property purchased or acquired by the company or proposed so to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus or the purchase or acquisition of which has not been completed at the date of the issue of the prospectus, other than property—

- (a) the contract for the purchase or acquisition whereof was entered into in the ordinary course of the company's business, the contract not being made in contemplation of the issue nor the issue in consequence of the contract ; or
- (b) as respects which the amount of the purchase money is not material.

(3) For the purposes of this clause, where any of the vendors is a firm, the members of the firm shall not be treated as separate vendors.

13. The amount, if any, or the nature and extent of any consideration, paid within the two preceding years, or payable, as commission to any person (including commission so paid or payable to any sub-underwriter, who is a promoter or officer of the company) for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions for any shares in, or debentures of the company; and giving also the following particulars namely :—

- (a) the name, description, address and occupation of each such person ;
- (b) particulars of the amounts which each has underwritten or sub-underwritten ;
- (c) the rate of the commission payable for such underwriting or sub-underwriting ;
- (d) any other material term or condition of the underwriting or sub-underwriting contract with such person ; and
- (e) when such person is a company or a firm, the nature of any interest direct or indirect, in such company or firm of any promoter or officer of the company in respect of which the prospectus is issued.

14. (1) Save as provided in clause 27, the amount or estimated amount of preliminary expenses and the persons by whom any of those expenses have been paid or are payable.

(2) Save as aforesaid, the amount or estimated amount of the expenses of the issue and the persons by whom any of those expenses have been paid or are payable.

15. Any amount or benefit paid or given within the two preceding years or intended to be paid or given to any promoter and the consideration for the payment or the giving of the benefit.

16. (1) The dates of, parties to, and general nature of—

(a) every contract appointing or fixing the remuneration of a managing director, managing agent or manager whenever entered into, that is to say, whether within, or more than, two years before the date of the prospectus ;

(b) every other material contract not being a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company or a contract entered into more than two years before the date of the prospectus.

(2). A reasonable time and place at which any such contract or a copy thereof may be inspected.

17. The names and addresses of the auditors, if any, of the company.

18. (1) Full particulars of the nature and extent of the interest, if any, of every director or promoter—

(a) in the promotion of the company ; or

(b) in the property acquired by the company within two years of the date of the prospectus or proposed to be acquired by it.

(2) Where the interest of such a director or promoter consists in being a member of a firm or company, the nature and extent of the interest of the firm or company, with a statement of all sums paid or agreed to be paid to him or to the firm or company in cash or shares or otherwise by any person either to induce him to become, or to qualify him as, a director, or otherwise for services rendered by him or by the firm or company in connection with the promotion or formation of the company.

19. If the share capital of the company is divided into different classes of shares, the right of voting at meetings of the company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.

20. Where the articles of the company impose any restrictions upon the members of the company in respect of the right to attend, speak or vote at meetings of the company or of the right to transfer shares, or upon the directors of the company in respect of their powers of management, the nature and extent of those restrictions.

21. (1) In the case of a company which has been carrying on business, the length of time during which the business of the company, has been carried on.

(2) If the company proposes to acquire a business which has been carried on for less than three years, the length of time during which the business has been carried on.

22. (1) If any reserves or profits of the company or any of its subsidiaries have been capitalised, particulars of the capitalisation.

(2) Particulars of the surplus arising from the revaluation of the assets of the company or any of its subsidiaries during the two years preceding the date of the prospectus and the manner in which such surplus has been dealt with.

23. A reasonable time and place at which copies of all balance sheets and profit and loss accounts, if any, on which the report of the auditors under Part II of this Schedule is based may be inspected.

## PART II

### REPORTS TO BE SET OUT

24. (1) A report by the auditors of the company with respect to—

- (a) profits and losses and assets and liabilities, in accordance with sub-clause (2) or (3) of this clause, as the case may require ; and
- (b) the rates of the dividends, if any, paid by the company in respect of each class of shares in the company for each of the five financial years immediately preceding the issue of the prospectus, giving particulars of each such class of shares on which such dividends have been paid and particulars of the cases in which no dividends have been paid in respect of any class of shares for any of those years ;

and, if no accounts have been made up in respect of any part of the period of five years ending on a date three months before the issue of the prospectus, containing a statement of that fact.

(2) If the company has no subsidiaries, the report shall—

- (a) so far as regards profits and losses, deal with the profits or losses of the company (distinguishing items of a non-recurring nature) for each of the five financial years immediately preceding the issue of the prospectus ; and
- (b) so far as regards assets and liabilities, deal with the assets and liabilities of the company at the last date to which the accounts of the company were made up.†

(3) If the company has subsidiaries, the report shall—

- (a) so far as regards profits and losses, deal separately with the company's profits or losses as provided by sub-clause (2) and in addition, deal either—
  - (i) as a whole with the combined profits or losses of its subsidiaries, so far as they concern members of the company ; or
  - (ii) individually with the profits or losses of each subsidiary, so far as they concern members of the company ;

or, instead of dealing separately with the company's profits or losses, deal as a whole with the profits or losses of the company, and, so far as they concern members of the company, with the combined profits or losses of its subsidiaries ; and

- † (b) so far as regards assets and liabilities, deal separately with the company's assets and liabilities as provided by sub-clause (2) and in addition, deal either—



(i) as a whole with the combined assets and liabilities of its subsidiaries, with or without the company's assets and liabilities, or

(ii) individually with the assets and liabilities of each subsidiary;

and shall indicate as respects the assets and liabilities of the subsidiaries, the allowance to be made for persons other than members of the company.

25. If the proceeds, or any part of the proceeds, of the issue of the shares or debentures are or is to be applied directly or indirectly—

(i) in the purchase of any business ; or

(ii) in the purchase of an interest in any business and by reason of that purchase or, anything to be done in consequence thereof, in connection therewith, the company will become entitled to an interest, as respects either the capital or profits and losses, or both, in such business exceeding fifty per cent thereof ;

a report made by accountants (who shall be named in the prospectus) upon—

(a) the profits or losses of the business for each of the five financial years immediately preceding the issue of the prospectus; and

(b) the assets and liabilities of the business at the last date to which the accounts of the business were made up, being a date not more than one hundred and twenty days before the date of the issue of the prospectus.

26. (1) If—

(a) the proceeds, or any part of the proceeds, of the issue of the shares or debentures are or is to be applied directly or indirectly in any manner resulting in the acquisition by the company of shares in any other body corporate ; and

(b) by reason of that acquisition or anything to be done in consequence thereof or in connection therewith, that body corporate will become a subsidiary of the company ;

a report made by accountants (who shall be named in the prospectus) upon—

(i) the profits or losses of the other body corporate for each of the five financial years immediately preceding the issue of the prospectus ; and

(ii) the assets and liabilities of the other body corporate at the last date to which its accounts were made up.

(2) The said report shall—

(a) indicate how the profits or losses of the other body corporate dealt with by the report would, in respect of the shares to be acquired, have concerned members of the company and what allowance would have fallen to be made, in relation to assets and liabilities so dealt with, for holders of other shares, if the company had at all material times held the shares to be acquired ; and

(b) where the other body corporate has subsidiaries, deal with the profits or losses and the assets and liabilities of the body corporate and its subsidiaries in the manner provided by sub-clause (3) of clause 24 of this Schedule in relation to the company and its subsidiaries.

## PART III

## PROVISIONS APPLYING TO PARTS I AND II OF SCHEDULE

27. Clause 1 (so far as it relates to the contents of the memorandum and particulars of the signatories and the shares subscribed for by them) and clause 14 (so far as it relates to preliminary expenses) of this Schedule shall not apply in the case of a prospectus issued more than two years after the date at which the company is entitled to commence business.

28. Every person shall, for the purposes of this Schedule, be deemed to be a vendor who has entered into any contract, absolute or conditional, for the sale or purchase, or for any option of purchase, of any property to be acquired by the company, in any case where—

- (a) the purchase money is not fully paid at the date of the issue of the prospectus ;
- (b) the purchase money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus ;
- (c) the contract depends for its validity or fulfilment on the result of that issue.

29. Where any property to be acquired by the company is to be taken on lease, this Schedule shall have effect as if the expression "vendor" included the lessor, and the expression "purchase money" included the consideration for the lease, and the expression "sub-purchaser" included a sub-lessee.

30. If in the case of a company which has been carrying on business, or of a business which has been carried on for less than five financial years, the accounts of the company or business have only been made up in respect of four such years, three such years, two such years or one such year, Part II of this Schedule shall have effect as if references to four financial years, three financial years, two financial years or one financial year, as the case may be, were substituted for references to five financial years.

31. (1) The expression "financial year" in Part II of this Schedule means the period in respect of which the accounts of the company or of the business, as the case may be, are made up, and where the accounts of the company or business have been made up for a period greater or less than a year, that shall for the purpose of that Part of greater or less period this Schedule, be deemed to be a financial year.

(2) Where the five financial years immediately preceding the issue of the prospectus which are referred to in Part II of this Schedule cover a period of less than five years, references to the said five financial years in that Part shall have effect as if references to a number of financial years the aggregate period covered by which is not less than five years immediately preceding the issue of the prospectus were substituted for references to the five financial years aforesaid.

32. Any report required by Part II of this Schedule shall either—

- (a) indicate by way of note any adjustments as respects the figures of any profits or losses or assets and liabilities dealt with by the report which appear to the persons making the report necessary; or
- (b) make those adjustments and indicate that adjustments have been made.

33. Any report by accountants required by Part II of this Schedule—

- (a) shall be made by accountants qualified under this Act for appointment as auditors of a company; and
- (b) shall not be made by any accountant who is an officer or servant, or a partner of or in the employment of an officer or servant, of the company or of the company's subsidiary or holding company or of a subsidiary of the company's holding company.

For the purposes of this clause, the expression "officer" shall include a proposed director but not an auditor.

## SCHEDULE III

(See section 64)

FORM OF STATEMENT IN LIEU OF PROSPECTUS TO BE DELIVERED TO REGISTRAR BY A COMPANY WHICH DOES NOT ISSUE A PROSPECTUS OR WHICH DOES NOT GO TO ALLOTMENT ON A PROSPECTUS ISSUED, AND REFORTS TO BE SET OUT THEREIN.

## PART I.

FORM OF STATEMENT AND PARTICULARS TO BE CONTAINED THEREIN.

THE COMPANIES ACT, 1954.

Statement in lieu of Prospectus delivered for registration by

[Insert the name of the company.]

Pursuant to section 64 of the Companies Act, 1954.

Delivered for registration by

The nominal share capital of the company.

Divided into	.	.	.	.	.	Rs.		
	.	.	.	.	.	Shares of Rs.		each.

						"	"	"
--	--	--	--	--	--	---	---	---

Amount (if any) of above capital which consists of redeemable preference shares.

						"	"	"
						Shares of Rs.		each.

The earliest date on which the company has power to redeem these shares.

Names, descriptions and addresses of

(a) directors or proposed directors.

(b) managing director or proposed managing director.

(c) managing agent or proposed managing agent.

(d) manager or proposed manager.

Any provision in the Articles of the company or in any contract irrespective of the time when it was entered into, as to appointment of and remuneration payable to the persons referred to in (a), (b), (c) and (d) above.

If the share capital of the company is divided into different classes of shares, the right of voting at meetings of the company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.

Number and amount of shares and debentures agreed to be issued as fully or partly paid up otherwise than in cash.	1.	.	shares of Rs.	fully paid.
	2.	.	shares upon which Rs. per share credited as paid.	

The consideration for the intended issue of those shares and debentures.

3. . debenture Rs.
4. Consideration :—

Number, description and amount of any shares or debentures which any person has or is entitled to be given an option to subscribe for, or to acquire from a person to whom they have been allotted or agreed to be allotted with a view to his offering them for sale.

1. . shares of Rs. ....and debentures of Rs. ....

Period during which option is exercisable.

2. Until

Price to be paid for shares or debentures subscribed for or acquired under option.

- 3.

Consideration for option or right to option.

4. Consideration:

Persons to whom option or right to option was given or, if given to existing shareholders or debenture holders as such, the relevant shares or debentures.

5. Names and addresses :—

Names and addresses of vendors of property purchased or acquired, or proposed to be purchased or acquired by the company except where the contract for its purchase or acquisition was entered into in the ordinary course of the business intended to be carried on by the company or the amount of the purchase money is not material.

Amount (in cash, shares or debentures) payable to each separate vendor.

Amount (if any) paid or payable (in cash or shares or debentures) for any such property, specifying amount (if any) paid or payable for goodwill,

Total purchase price	Rs.....
Cash . . .	Rs. . .
Shares . . .	Rs. . .
Debentures . .	Rs. . .
Goodwill.....	Rs. . .

Short particulars of any transaction relating to any such property which was completed within the two preceding years and in which any vendor to the company or any person who is, or was at the time thereof, a promoter, director or proposed director of the company had any interest, direct or indirect.

Amount (if any) paid or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares or debentures in the company ; or

Amount paid.  
„ payable.

Rate of the commission . . . Rate per cent.

The number of shares, if any, which persons have agreed to subscribe for a commission.

If it is proposed to acquire any business, the amount, as certified by the persons by whom the accounts of the business have been audited, of the net profits of the business in respect of each of the three years immediately preceding the date of this statement, provided that in the case of a business which has been carried on for less than three years and the accounts of which have only been made up in respect of two years or one year, the above requirements shall have effect as if references to two years or one year, as the case may be, were substituted for references to three years, and in any such case the statement shall say how long the business to be acquired has been carried on. [Were the financial year with respect to which the accounts of the business have been made up is greater or less than a year, references to three years, two years, and one year in this paragraph shall have effect as if references to such number of financial years as, in the aggregate, cover a period of not less than three years, two years or one year, as the case may be, were substituted for references to three years, two years and one year respectively.

Estimated amount of preliminary expenses. Rs.

By whom those expenses have been paid or are payable.

Amount paid or intended to be paid to any promoter. Name of promoter.  
Amount Rs.

Consideration for the payment . . . Consideration :—

Any other benefit given or intended to be given to any promoter. Name of promoter :—  
Nature and value of benefit :—

Consideration for giving of benefit. Consideration :—

Dates of, parties to and general nature of every material contract (other than (a) contracts appointing or fixing the remuneration of directors, managing director, managing agent or manager ; or (b) contracts entered into in the ordinary course of the business intended to be carried on by the company or entered into more than two years before the delivery of this statement) .

Time and place at which the contracts or copies thereof may be inspected or (1) in the case of a contract not reduced into writing, a memorandum giving full particulars thereof, and (2) in the case of a contract wholly or partly in a language other than English, a copy of a translation thereof in English or embodying a translation in English of the parts in the other language, as the case may be, being a translation certified in the prescribed manner to be a correct translation.

Names and addresses of the auditors of the company (if any).

Full particulars of the nature and extent of the interest of every director, managing director, managing agent, or manager in the promotion of or in the property proposed to be acquired by the company, or where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares, or otherwise, by any person either to induce him to become, or to qualify him as, a director, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company.

(Signatures of the persons above-named as directors or proposed directors, or of their agents authorised in writing.)

Date

## PART II

### REPORTS TO BE SET OUT

1. Where it is proposed to acquire a business, a report made by accountants (who shall be named in the statement) upon—

- (a) the profits or losses of the business in respect of each of the five financial years immediately preceding the delivery of the statement to the Registrar ; and
- (b) the assets and liabilities of the business at the last date to which the accounts of the business were made up.

2. (1) Where it is proposed to acquire shares in a body corporate which by reason of the acquisition or anything to be done in consequence thereof or in connection therewith will become a subsidiary of the company, a report made by accountants (who shall be named in the statement) with respect to the profits and losses and assets and liabilities of the other body corporate in accordance with sub-clause (2) or (3) of this clause as the case requires, indicating how the profits or losses of the other body corporate dealt with by the report would, in respect of the shares to be acquired, have concerned members of the company, and what allowance would have fallen to be made, in relation to assets and liabilities so dealt with, for holders of other shares, if the company had at all material times held the shares to be acquired.

(2) If the other body corporate has no subsidiaries, the report referred to in sub-clause (1) shall—

- (a) so far as regards profits and losses, deal with the profits or losses of the body corporate in respect of each of the five financial years immediately preceding the delivery of the statement to the Registrar ; and
- (b) so far as regards assets and liabilities, deal with the assets and liabilities of the body corporate at the last date to which the accounts of the body corporate were made up.

(3) If the other body corporate has subsidiaries, the report referred to in sub-clause (1) shall—

- (a) so far as regards profits and losses, deal separately with the other body corporate's profits or losses as provided by sub-clause (1) and in addition deal either—
  - (i) as a whole with the combined profits or losses of its subsidiaries so far as they concern members of the other body corporate ; or
  - (ii) individually with the profits or losses of each subsidiary, so far, as they concern members of the other body corporate ;



or, instead of dealing separately with the other body corporate's profits or losses, deal as a whole with the profits or losses of the other body corporate and, so far as they concern members of the other body corporate, with the combined profits or losses of its subsidiaries ; and

(b) so far as regards assets and liabilities, deal separately with the other body corporate's assets and liabilities as provided by sub-clause (1) and, in addition, deal either—

(i) as a whole with the combined assets and liabilities of its subsidiaries, with or without the other body corporate's assets and liabilities ; or

(ii) individually with the assets and liabilities of each subsidiary; and shall indicate, as respects the assets and liabilities of the sub-sidiaries, the allowance to be made for persons other than members of the company.

### PART III

#### PROVISIONS APPLYING TO PARTS I AND II OF THIS SCHEDULE.

3. (1) In this Schedule, the expression "vendor" includes a vendor as defined in Part III of Schedule II; and the expression "financial year" has the meaning assigned to it in that Part of that Schedule.

(2) Sub-clause (2) of clause 31 of Schedule II shall apply to the interpretation of Part II of this Schedule as it applies to the interpretation of Part II of Schedule II.

4. If in the case of a business which has been carried on, or of a body corporate which has been carrying on business, for less than five financial years, the accounts of the business or body corporate have only been made up in respect of four such years, three such years, two such years or one such year, Part II of this Schedule shall have effect as if references to four financial years, three financial years, two financial years or one financial year, as the case may be, were substituted for references to five financial years.

5. Any report required by Part II of this Schedule shall either —

(a) indicate by way of note any adjustments as respects the figures of any profit or losses or assets and liabilities dealt with by the report which appear to the person making the report necessary ; or

(b) make those adjustments and indicate that adjustments have been made.

6. Any report by accountants required by Part II of this Schedule—

(a) shall be made by accountants qualified under this Act for appointment as auditors of a company ; and

(b) shall not be made by any accountant who is an officer or servant, or a partner of or in the employment of an officer or servant, of the company or of the company's subsidiary or holding company or of a subsidiary of the company's holding company ; and for the purposes of this clause the expression "officer" shall include a proposed director but not an auditor.

## SCHEDULE IV

[See section 39 (2)(b)].

FORM OF STATEMENT IN LIEU OF PROSPECTUS TO BE DELIVERED TO REGISTRAR BY A PRIVATE COMPANY ON BECOMING A PUBLIC COMPANY AND REPORTS TO BE SET OUT THEREIN.

## PART I

FORM OF STATEMENT AND PARTICULARS TO BE CONTAINED THEREIN.  
THE COMPANIES ACT, 1954.

Statement in lieu of Prospectus delivered for registration by

[Insert the name of the Company.]

Pursuant to clause (b) of sub-section (2) of section 39 of the Companies Act, 1954.

Delivered for registration by

The nominal share capital of the company. Rs.

Divided into . . . . . Shares of Rs. each.

" " "

" " Rs. each.

Amount (if any) of above capital which consists of redeemable preference shares.

The earliest date on which the company has power to redeem these shares.

Names, descriptions and addresses of

(a) directors or proposed directors.

(b) managing director or proposed managing director.

(c) managing agent or proposed managing agent.

(d) manager or proposed manager.

Any provision in the Articles of the company or in any contract irrespective of the time when it was entered into, as to appointment of and remuneration payable to the persons referred to in (a), (b), (c) and (d) above.

Amount of shares issued . . . . . Shares.

Amount of commissions paid in connection therewith.

Amount of discount, if any, allowed on the issue of any shares, or so much thereof as has not been written off at the date of the statement.

Unless more than two years have elapsed since the date on which the company was entitled to commence business :—

Amount of preliminary expenses. . . Rs.

By whom those expenses have been paid or are payable.

Amount paid to any promoter . . . Name of promoter :—  
Amount Rs.

Consideration for the payment	Consideration :—
Any other benefit given to any promoter.	Name of promoter :—
Consideration for giving of benefit	Nature and value of benefit :—
Consideration :—	
If the share capital of the company is divided into different classes of shares, the right of voting at meetings of the company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.	
Number and amount of shares and debentures issued within the two years preceding the date of this statement as fully or partly paid up otherwise than for cash or agreed to be so issued at the date of this statement.	1. shares of Rs. fully paid.
	2. shares upon which Rs. per share credited as paid.
Consideration for the issue of those shares or debentures.	3. debentures for Rs. each
Number, description and amount of any shares or debentures which any person has or is entitled to be given an option to subscribe for, or to acquire from a person to whom they have been allotted or agreed to be allotted with a view to his offering them for sale.	4. Consideration :—
Period during which option is exercisable.	1. shares of Rs. and debentures of Rs.
Price to be paid for shares or debentures subscribed for or acquired under option.	2. Until
Consideration for option or right to option.	3.
Persons to whom option or right to option was given or, if given to existing shareholders or debenture holders as such, the relevant shares or debentures.	4. Consideration :—
Names and addresses of vendors of property (1) purchased or acquired by the company within the two years preceding the date of this statement or (2) agreed or proposed to be purchased or acquired by the company, except where the contract for its purchase or acquisition was entered into in the ordinary course of business and there is no connection between the contract and the company ceasing to be a private company or where the amount of the purchase money is not material.	5. Names and addresses :—
Amount (in cash, shares or debentures) paid or payable to each separate vendor.	

Amount paid or payable in cash, shares or debentures for any such property, specifying the amount paid or payable for goodwill.	Total purchase price Rs.....
	Cash . . . Rs.
	Shares . . . Rs.
	Debentures . . . Rs.
	Goodwill . . . Rs.

Short particulars of any transaction relating to any such property which was completed within the two preceding years and in which any vendor to the company or any person who is, or was at the time thereof, a promoter, director or proposed director of the company had any interest direct or indirect.

Amount (if any) paid or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares or debentures in the company; or rate of the commission.

Amount paid.  
Amount Payable.  
Rate per cent.

The number of shares, if any, which persons have agreed to subscribe for a commission.

If it is proposed to acquire any business, the amount, as certified by the persons by whom the accounts of the business have been audited, of the net profits of the business in respect of each of the three years immediately preceding the date of this statement, provided that in the case of a business which has been carried on for less than three years and the accounts of which have only been made up in respect of two years or one year the above requirements shall have effect as if references to two years or one year, as the case may be, were substituted for references to three years, and in any such case the statement shall say how long the business to be acquired has been carried on. Where the financial year with respect to which the accounts of the business have been made up is greater or less than a year, references to three years, two years and one year in this paragraph shall have effect as if references to such number of financial years as, in the aggregate, cover a period of not less than three years, two years or one year, as the case may be, were substituted for references to three years, two years and one year respectively,

Dates of, parties to, and general nature of every material contract [other than (a) contracts appointing or fixing the remuneration of directors, managing director, managing agent or manager, or (b) contracts entered into in the ordinary course of business or entered into more than two years before the delivery of this statement].

Time and place at which the contracts or copies thereof may be inspected or (1) in the case of a contract not reduced into writing, a memorandum giving full particulars thereof, and (2) in the case of a contract wholly or partly in a language other than English a copy of a translation thereof in English or embodying a translation in English (or Hindi) of the parts in the other language, as the case may be, being a translation certified in the prescribed manner to be a correct translation.

Names and addresses of the auditors of the company.

Full particulars of the nature and extent of the interest of every director, managing director, managing agent or manager, in any property purchased or acquired by the company within the two years preceding the date of this statement or proposed to be purchased or acquired by the company or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares, or otherwise, by any person either to induce him to become or to qualify him as, a director, or otherwise for services rendered or to be rendered to the company by him or by the firm.

Rates of the dividends (if any) paid by the company in respect of each class of shares in the company in each of the five financial years immediately preceding the date of this statement or since the incorporation of the company, whichever period is shorter.

Particulars of the cases in which no dividends have been paid in respect of any class of shares in any of these years.

(Signatures of the persons above-named  
as directors or proposed directors or  
of their agents authorised in writing.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date.

## PART II

### REPORTS TO BE SET OUT

1. If unissued shares or debentures of the company are to be applied in the purchase of a business, a report made by accountants (who shall be named in the statement) upon—

- (a) the profits or losses of the business in respect of each of the five financial years immediately preceding the delivery of the statement to the Registrar ; and
- (b) the assets and liabilities of the business at the last date to which the accounts of the business were made up.

2. (1) If unissued shares or debentures of the company are to be applied directly or indirectly in any manner resulting in the acquisition of shares in a body corporate which by reason of the acquisition or anything to be done in consequence thereof or in connection therewith will become a subsidiary of the company, a report made by accountants (who shall be named in the statement) with respect to the profits and losses and assets and liabilities of the other body corporate in accordance with sub-clause (2) or (3) of this clause, as the case requires, indicating how the profits or losses of the other body corporate dealt with by the report would, in respect of the shares to be acquired, have concerned members of the company, and what allowance would have fallen to be made, in relation to assets and liabilities so dealt with, for holders of other shares, if the company had at all material times held the shares to be acquired.

(2) If the other body corporate has no subsidiaries, the report referred to in sub-clause (1) shall—

- (a) so far as regards profits and losses, deal with the profits or losses of the body corporate in respect of each of the five financial years immediately preceding the delivery of the statement to the Registrar ; and
- (b) so far as regards assets and liabilities, deal with the assets and liabilities of the body corporate at the last date to which the accounts of the body corporate were made up.

(3) If the other body corporate has subsidiaries, the report referred to in sub-clause (1) shall—

- (a) so far as regards profits and losses, deal separately with the other body corporate's profits or losses as provided by sub-clause (2), and in addition deal either—
- (i) as a whole with the combined profits or losses of its subsidiaries, so far as they concern members of the other body corporate ;
- or

- (ii) individually with the profits or losses of each subsidiary, so far as they concern members of the other body corporate ;  
or, instead of dealing separately with the other body corporate's profits or losses, deal as a whole with the profits or losses of the other body corporate and, so far as they concern members of the other body corporate, with the combined profits or losses of its subsidiaries ; and
- (b) so far as regards assets and liabilities, deal separately with the other body corporate's assets and liabilities as provided by sub-clause (2) and in addition, deal either—
  - (i) as a whole with the combined assets and liabilities of its subsidiaries, with or without the other body corporate's assets and liabilities ; or
  - (ii) individually with the assets and liabilities of each subsidiary ; and shall indicate, as respects the assets and liabilities of the subsidiaries, the allowance to be made for persons other than members of the company.

### PART III

#### PROVISIONS APPLYING TO PARTS I AND II OF THIS SCHEDULE

3. (1) In this Schedule the expression "vendor" includes a vendor as defined in Part III of Schedule II and the expression "financial year" has the meaning assigned to it in that Part of that Schedule.

(2) Sub-clause (2) of clause 31 of Schedule II shall apply to the interpretation of Parts I and II of this Schedule as it applies to the interpretation of Part II of Schedule II.

4. If in the case of a business which has been carried on, or of a body corporate which has been carrying on business, for less than five financial years, the accounts of the business or body corporate have only been made up in respect of four such years, three such years, two such years or one such year, Parts I and II of this Schedule shall have effect as if references to four financial years, three financial years, two financial years or one financial year, as the case may be, were substituted for references to five financial years.

5. Any report required by Part II of this Schedule shall either —

- (a) indicate by way of note any adjustments as respects the figures of any profits or losses or assets and liabilities dealt with by the report which appear to the persons making the report necessary ;  
or
- (b) shall make those adjustments and indicate that adjustments have been made.

6. Any report by accountants required by Part II of this Schedule shall—

- (a) be made by accountants qualified under this Act for appointment as auditors of a company ; and
- (b) shall not be made by any accountant who is an officer or servant or a partner of or in the employment of an officer or servant, of the company, or of the company's subsidiary or holding company or of a subsidiary of the company's holding company ; and for the purposes of this clause the expression "officer" shall include a proposed director but not an auditor.

## SCHEDULE V

(See section 152)

## CONTENTS AND FORM OF ANNUAL RETURN OF A COMPANY

## HAVING A SHARE CAPITAL

## PART I

## CONTENTS

1. The address of the registered office of the company.
2. If any part of the register of members or debenture holders of a company is, under the provisions of this Act, kept in any State or country outside India, the name of that State or country and the address of the place where such part of the register is kept.
3. A summary, distinguishing between shares issued for cash, bonus shares, and shares other than bonus shares issued as fully or partly paid up otherwise than in cash, and specifying in respect of each class of shares the following particulars :—
  - (a) the amount of the share capital of the company and the number of shares into which it is divided ;
  - (b) the number of shares taken, from the commencement of the company up to the date of the company's last annual general meeting ;
  - (c) the amount called up on each share up to the date aforesaid ;
  - (d) the total amount of calls received up to that date ;
  - (e) the total amount of calls unpaid on that date ;
  - (f) the total amount of the sums (if any) paid by way of commission in respect of any shares or debentures up to that date ;
  - (g) the discount allowed on the issue of any shares issued at a discount or so much of that discount as has not been written off at the date aforesaid ;
  - (h) the total amount of the sums (if any) allowed by way of discount in respect of any debentures since the date of the annual general meeting with reference to which the last return was submitted ;
  - (i) the total number of shares forfeited up to the date referred to in sub-clause (b) ;
  - (j) the total amount of shares for which share warrants are outstanding at the date referred to in sub-clause (b) and of share warrants issued and surrendered respectively since the date referred to in sub-clause (h) and the number of shares comprised in each warrant.
4. Particulars of the total amount of the indebtedness of the company on the date referred to in sub-clause (b) of clause 3 in respect of all mortgages and charges which are required to be registered with the Registrar under this Act, or which would have been required so to be registered if created on or after the 1st day of April 1914.



## 5. A list—

- (a) containing the names, addresses and occupations, if any, of all persons who, on the day of the company's last annual general meeting are members of the company, and of persons who had ceased to be members since the date referred to in sub-clause (h) of clause 3 or, in the case of the first return, since the incorporation of the company ;
- (b) stating the number of shares held by each of the existing members at the date referred in sub-clause (b) of clause 3, specifying shares transferred since the date referred to in sub-clause (h) of clause 3 (or, in the case of the first return, since the incorporation of the company) by persons who are still members and have ceased to be members respectively, and the dates of registration of the transfers ;
- (c) if the names aforesaid are not arranged in alphabetical order, having annexed thereto an index sufficient to enable the name of any person therein to be easily found.

6. All such particulars, with respect to the persons who at the date of the company's last annual general meeting are the directors of the company and with respect to any person who at that date is the managing agent, the manager or the secretary of the company, as are by this Act required to be contained with respect to directors, the managing agent, the manager and the secretary respectively in the register of the directors, managing agents, managers and secretaries of a company.

## PART II

## FORM

ANNUAL RETURN of \_\_\_\_\_ Limited,  
made up to the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_ being the  
date of the last annual general meeting of the company

## I. Address.

(Address of the registered office of the company.)

## 2. Situation of Foreign Registers of Members and Debenture holders.

- (a) Name of every State or country outside India in which foreign register is kept.
- (b) Address of place in each such State or country in which a foreign register is kept.

## 3. Summary of Share Capital and Debentures.

## (a) Nominal Share Capital.

Nominal share capital Rs. .... divided into :

(Insert number and class) shares of .....  
 .... shares of ..  
 .... shares of ..  
 .... shares of ..

	<i>Number</i>	<i>Class</i>	
Number of shares of each class taken up to the date of the last annual general meeting (which number must agree with the total shown in the list as held by members on that date)	..	..	shares
	..	..	shares
	..	..	shares
	..	..	shares
	..	..	shares
Number of shares of each class issued subject to payment wholly in cash.	..	..	share.
	..	..	share.
	..	..	shares
	..	..	shares
Number of shares of each class issued as fully paid up for a consideration other than cash.	..	..	shares
	..	..	shares
	..	..	shares
	..	..	shares
Number of shares of each class issued as partly paid up for a consideration other than cash and extent to which each such share is so paid up.	..	..	shares
	..	..	issued as paid up to the extent of Rs....per share
	..	..	shares
	..	..	issued as paid up to the extent of Rs....per share.
	..	..	shares
	..	..	issued as paid up to the extent of Rs....per share.
	..	..	shares
	..	..	issued as paid up to the extent of Rs. ....per share.
Number of shares (if any) of each class issued at a discount.	..	..	shares
	..	..	shares
	..	..	shares
	..	..	shares
Amount of discount on the issue of shares which has not been written off at the date of last annual general meeting	R\$.....		
	<i>Number</i>	<i>Class</i>	
Amount called upon number of shares of each class.	R\$....per share on	..	shares
	R\$....per share on	..	shares
	R\$....per share on	..	shares
	R\$....per share on	..	shares
Total amount of calls received, including payments on application and allotment and any sums received on shares forfeited.		R\$.....	
	<i>Number</i>	<i>Class</i>	
Total amount (if any) agreed to be considered as paid on number of shares of each class issued as fully paid up for a consideration other than cash.	R\$....on	{ .. .. .. ..	{ shares shares shares shares

## SEC. 2] THE GAZETTE OF INDIA EXTRAORDINARY

Total amount (if any) agreed to be considered as paid on number of shares of each class issued as partly paid up for a consideration other than cash.	Rs.....on	{	..	..	shares
			..	..	shares
			..	..	shares
			..	..	shares
Total amount of calls unpaid	Rs. ....				
Total amount of the sums (if any) paid by way of commission in respect of any shares or debentures.	Rs. ....				
Total amount of the sums (if any) allowed by way of discount in respect of any debentures since the date of the annual general meeting with reference to which the last annual return was submitted.	Rs. ....				
			<i>Number</i>	<i>Class</i>	
Total number of shares of each class forfeited.			..	..	shares
			..	..	shares
			..	..	shares
			..	..	shares
Total amount paid (if any) on shares forfeited.	Rs. ....				
Total amount of shares for which share warrants to bearer are outstanding.	Rs. ....				
Total amount of share warrants to bearer issued and surrendered respectively since the date of the annual general meeting with reference to which the last annual return was submitted.			Issued	Rs.....	
			Surrendered	Rs.....	
Number of shares comprised in each share warrant to bearer, specifying in the case of warrants of different kinds, particulars of each kind.	.....				

### 4. Particulars of Indebtedness.

Total amount of indebtedness of the company in respect of all mortgages and charges which are required to be registered with the Registrar under the Companies Act, 1954, or which would have been required so to be registered if created on or after the 1st April 1914.	Rs.....
--	---------

### 5. List of Past and Present Members.

List of persons holding shares or stock in the company on the day of the annual general meeting namely, the.....day of.....19 , and of persons who have held shares or stock therein at any time since the day of

19 ..... when the previous annual meeting was held, or in the case of the first return, at any time since the incorporation of the company.

Folio in register ledger containing particulars	Names, addresses and occupations, if any	Account of Shares				Remarks.
		Number of shares held by members at date of annual general meeting *†	Particulars of shares transferred since the date of the previous annual general meeting or, in the case of the first return, since the incorporation of the company, by (a) persons who are still members and (b) persons who have ceased to be members‡			
			Number †	Date of registration of transfer		
				(a)	(b)	

\*The aggregate number of shares held by each member must be stated, and the aggregates must be added up so as to agree with the number of shares stated in the summary of share capital and debentures to have been taken up.

†When the shares are of different classes these columns should be sub-divided so that the number of each class held, or transferred, may be shown separately. Where any shares have been converted into stock the amount of stock held by each member must be shown.

‡The date of registration of each transfer should be given as well as the number of shares transferred on each date. The particulars should be placed opposite the name of the transferor and not opposite that of the transferee, but the name of the transferee may be inserted in the "Remarks" column immediately opposite the particulars of each transfer.

#### Notes.

1. If either of the two immediately preceding returns has given as at the date of the annual general meeting with reference to which it was submitted, the full particulars required as past and present members and the shares and stock held and transferred, by them, only such of the particulars need be given as relate to persons ceasing to be or becoming members since that date and to shares transferred since that date or to changes as compared with that date in the amount of stock held by a member.

2. If the names in the list are not arranged in alphabetical order, an index sufficient to enable the name of any person to be readily found must be annexed.

#### 6. Particulars of Directors, Managing Agents, Managers and Secretaries.

A. Particulars of the persons who are directors of the company on the day of the annual general meeting, namely, the.....day of.....19

Present name or names and surname, in full,	Any former name or names and surname, in full.	Nationality	Usual residential address	Business, occupation and particulars of other directorships and managing agencies, managerships and secretaryships held	Date of birth.

B. Particulars of the person who is Managing Agent of the company on the day aforesaid.

Name. (In the case of an individual, present name or names and surname, in full. In the case of a corporation or a firm, the corporate or firm name.)	Any former name or names and surname, in full	Usual residential address. (In the case of a corporation or firm, the registered or principal office.)	Particulars of other managing agencies and directorships, manager-ships and secretary ships held
--	---	---	--

C. Particulars of the person who is Manager/Secretary of the company on the day aforesaid.

Present name or names and surname, in full	Any former name or names and surname in full	Nationality.	Usual residential address	Particulars of other manager-ships or secretaryships and directorships and managing agencies held
--	--	--------------	---------------------------	---

Signed ....., Director

Signed ....., Managing Agent

Signed ....., Manager

Signed ....., Secretary

"Director" includes any person who occupies the position of a director by whatsoever name called, and any person in accordance with whose directions or instructions the directors of the company are accustomed to act.

"Name" includes a "forename", and "surname", in the case of a person usually known by a title different from his surname, means that title.

"Former name" and "former surname" do not include—

- (a) in the case of a person usually known by a title different from his surname, the name by which he was known previous to the adoption of or succession to the title ; or
- (b) in the case of any person, a former name or surname where that name or surname was changed or disused before the person bearing the name attained the age of eighteen years or has been changed or disused for a period of not less than twenty years ; or
- (c) in the case of a married woman the name or surname by which she was known previous to the marriage.

The names of all bodies corporate incorporated or carrying on business in India of which the director, managing agent, manager or secretary is also a director, managing agent manager or secretary should be given, except bodies corporate of which the company making the return is the wholly-owned subsidiary or bodies corporate which are the wholly-owned subsidiaries either of the company or of another body corporate of which the company is the wholly-owned subsidiary. A body corporate is deemed to be the wholly-owned subsidiary of another if it has no members except that other and that other's wholly-owned subsidiaries and its or their nominees. If the space provided in the form is insufficient, particulars of other directorships, managing agencies, managerhips or secretaryships should be listed on a separate statement attached to this return.

Dates of birth need only be given in the case of a company which is subject to section 258 of the Companies Act, 1954, namely, a company which is not a private company or which, being a private company, is the subsidiary of a public company.

Where all the partners in a firm are joint secretaries, the name and principal office of the firm may be stated.

\*Delivered for filing by.....

#### CERTIFICATES AND OTHER DOCUMENTS ACCOMPANYING ANNUAL RETURN.

*Certificate to be given by a Director and the Managing Agent/Manager/Secretary of every Private Company.*

We certify that the company has not since the date of† [the incorporation of the company/the annual general meeting with reference to which the last annual return was submitted] issued any invitation to the public to subscribe for any shares or debentures of the company.

Signed....., Director

Signed....., Managing Agent

Manager  
Secretary

*Further Certificate to be given as aforesaid if the number of Members of the Company exceeds Fifty.*

We certify that the excess of the number of members of the company over fifty consists wholly of persons who, under sub-clause (b) of clause (iii) of section 3 of the Companies Act, 1954, are not to be included in reckoning the number of fifty.

Signed....., Director.

Signed....., Managing Agent

Manager  
Secretary.

#### *Certified copies of Accounts.*

There must be annexed to this return a written copy, certified both by a director and by the managing agent/manager/secretary of the company to be a true copy, of every balance sheet laid before the company in general meeting during the period to which this return relates (including every document required by law to be annexed to the balance sheet) and a copy (certified as aforesaid) of the report of the auditors on, and of the report of the directors accompanying, each such balance sheet. If any such balance sheet or document required by law to be annexed thereto is in a language other than English, there must also be annexed to that balance sheet a translation in English of the balance sheet or document certified in the prescribed manner to be a correct translation. If any such balance sheet as aforesaid or document required by law to be annexed thereto did not comply with the requirements of the law as in force at the date of the audit with respect to the form of balance sheets or documents aforesaid, as the case may be, there must be made such additions to and corrections in the copy as would have been required to be made in the balance sheet or document in order to make it comply with the said requirements, and the fact that the copy has been so amended must be stated thereon.

\*This should be printed at the bottom of the first page of the return.

†In the case of the first return strike out the second alternative. In the case of a second or subsequent return strike out the first alternative.

# SCHEDULE VI

[See section 196]

## PART I

Form of balance sheet.

Balance Sheet of..... (Here enter the name of the company)  
As at..... (Here enter the date as at which the balance sheet is made out)

Instructions in accordance with which liabilities should be made out	Liabilities		Assets		Instructions in accordance with which assets should be made out
	Figures for the previous year	Figures for the current year	Figures for the previous year	Figures for the current year	
	Rs. (b)	Rs. (b)	Rs. (b)	Rs. (b)	
<p>*Terms of redemption or conversion (if any) of any Redeemable Preference Capital to be stated, together with earliest date of redemption or conversion.</p> <p>Particulars of any option on unissued share capital to be specified.</p>	<p>I. *SHARE CAPITAL :</p> <p>Authorised.....shares of Rs.....each.</p> <p>Subscribed (distinguishing between the various classes of capital and stating the particulars specified below, in respect of each class.)</p> <p>.....shares of Rs.....each.</p> <p>Rs. ....called up.</p> <p>Of the above shares, .....shares are allotted as fully paid up pursuant to a contract without payments being received in cash.</p> <p>Of the above shares,.....shares are allotted as fully paid up by way of bonus shares.</p> <p>Less : Calls unpaid :</p> <p>(i) By managing agents and where the managing agent is a firm, by the partners thereof, and where the managing agent is a private company, by the</p>		<p>I. †FIXED ASSETS :</p> <p>Distinguishing as far as possible between expenditure upon</p> <p>(a) goodwill, (b) land, (c) buildings, (d) leaseholds, (e) railway sidings, (f) plant and machinery, (g) furniture and fittings, (h) development of property, (i) patents, trade marks and designs, (j) live-stock and (k) vehicles etc.</p>		<p>†Under each head the original cost, and the additions thereto and deductions therefrom during the year, and the total depreciation written off or provided, to be stated.</p> <p>In case where original cost figures cannot be ascertained the valuation shown by the books shall be given and whereany of the assets are sold and the original cost in respect thereof is not ascertainable, the amount of the sale proceeds shall be shown as deduction.</p>

- directors or members of  
that company.  
(ii) By directors.  
(iii) By others.

*Add* Forfeited shares (amount  
paid up)  
Share Premium Account.

Where sums have been written off on a reduction of capital or a revaluation of assets, every Balance Sheet, (after the first Balance Sheet) subsequent to the reduction or revaluation shall show the reduced figures and with the date of the reduction, in place of the original cost.

Each Balance Sheet for the first five years subsequent to the date of the reduction, shall show also the amount of the reduction made.

Similarly, where sums have been added by writing up the assets, every Balance Sheet subsequent to such writing up shall show the increased figures with the date of the increase in place of the original cost.

Each Balance Sheet for the first five years subsequent to the date of writing up



Instructions in accordance with which liabilities should be made out.	Liabilities.		Assets.		Instructions in accordance with which assets should be made out.
	Figures for the previous year.	Figures for the current year.	Figures for the previous year.	Figures for the current year.	
*Additions and deductions since last Balance Sheet to be shown, under each of the specified heads.	Rs. (b)	Rs. (b)	Rs. (b)	Rs. (b)	
	<p>II. RESERVES AND SURPLUS :</p> <p>(1) Capital Reserves not available for Dividend.</p> <p>(2) Capital Redemption Reserve Fund.</p> <p>(3) Other Reserves specifying the nature of each reserve and the amount in respect thereof.</p> <p>Less : Debit balance in Profit and Loss Account (if any).</p> <p>(4) Any other Fund created out of Net Profit.</p> <p>(5) Surplus, that is, balance in Profit and Loss Account, after providing for proposed allocations, viz., Dividend, Bonus or Reserves.</p> <p>(6) Proposed additions to reserves.</p> <p>(7) Liability Funds.</p> <p>(8) Sinking Funds.</p> <p>(9) Pension, Insurance or Provident Funds etc.</p>		<p>II. INVESTMENTS :</p> <p>Showing nature of investments and mode of valuation, for example cost or market value and distinguishing between—</p> <p>* (1) Investments in Government or Trust Securities.</p> <p>• (2) Investments in shares, debentures or bonds (showing separately shares, fully paid up and partly paid up and also distinguishing the different classes of shares).</p> <p>* (3) Investments in shares, debentures or bonds of subsidiary companies (c).</p> <p>(4) Immovable properties.</p>		<p>shall also show the amount of increase made.</p> <p>*Aggregate amount of company's, quoted investments and also the market value thereof shall be shown.</p> <p>Aggregate amount of company's unquoted investments shall also be shown.</p>

\*The nature of the security to be specified in each case. Where loans have been guaranteed by managing agents, managers and/or directors, a mention thereof should be made also and also the aggregate amount of such loans under each head.

### III. SECURED LOANS

- (1) Debentures
- \* (2) Loans and Advances from Banks.
- \* (3) Loans and Advances from subsidiaries.
- \* (4) Other Loans and Advances

### INTEREST ACCRUED ON INVESTMENTS

#### III. CURRENT ASSETS :

- (1) Stores and Spare Parts.
- (2) Loose Tools.
- † (3) Stock-in-trade.
- \*\* (4) Works in Progress.
- † (5) Sundry Debtors.

Less : Reserves

† Mode of valuation of stock shall be stated and the amount in respect of raw materials shall also be stated separately where practicable.

\*\* Mode of valuation of Works shall be stated.

† In regard to Sundry Debtors, particulars to be given separately of—(a) debts considered good and in respect of which the company is fully secured; and (b) debts considered good for which the company holds no security other than the debtor's personal security; and (c) debts considered doubtful or bad.

Debts due by directors or other officers of the company or any of them either severally or jointly with any other person or debts due by firms or private

Instructions in accordance with which liabilities should be made out.	Liabilities.		Assets.		Instructions in accordance with which assets should be made out.
	Figures for the previous year	Figures for the current year	Figures for the previous year	Figures for the current year	
	Rs. (b)	Rs. (b)	Rs. (b)	Rs. (b)	<p>companies respectively in which any Director is a partner or a Director or a member to be separately stated.</p> <p>Debts due from other companies under the management of the same managing agents to be disclosed with the names of the managing agents (<i>vide</i> section 353).</p> <p>The maximum amount due by Directors or other officers of the company at any time during the year to be shown by way of a note.</p>

## IV. UNSECURED LOANS :

- (1) Fixed Deposits.
- (2) Loans and Advances from subsidiaries.

\* (3) Short Term Loans and Advances :

- (a) From Banks.
- (b) From others.

(4) Other Loans and Advances :

- (a) From Banks.
- (b) From others.

## V. CURRENT LIABILITIES AND PROVISIONS :

- (1) Acceptances.
- (2) Sundry Creditors.
- (3) Interest accrued and accruing on secured loans.
- (4) Interest accrued and accruing on unsecured loans.
- (5) Subsidiary Companies.
- (6) Provision for Taxation.
- (7) Provision for Contingencies.
- (8) Proposed Dividends.
- (9) Advance Payments and Unexpired Discounts for the portion for which value has still to be given, e.g., in the case of the following classes of companies :—  
(Newspaper, Fire Insurance, Theatre, Clubs, Banking, Steamship Companies etc.)

\* See note (d) at foot of form.

## † VI. LOANS AND ADVANCES :

- (1) Bills of Exchange.
- (2) Advances recoverable in cash or in kind or for value to be received, e.g., Rates, Taxes, Insurance, etc.
- (3) Balances on current account with Managing Agents.
- (4) Balances with Customs, Port Trust, etc. (where payable on demand).

† The above instructions regarding "Sundry Debtors" apply to "Loans and Advances" also. In addition, Loans and Advances to subsidiary companies shall be separately stated.

Instructions in accordance with which liabilities should be made out.	Liabilities.		Assets		Instructions in accordance with which assets should be made out.
	Figures for the previous year	Figures for the current year	Figures for the previous year	Figures for the current year	
	Rs. (b)	Rs. (b)	Rs. (b)	Rs. (b)	
	(10) Unclaimed Dividends. (11) Other Liabilities (if any). (12) Contingent Liabilities : (i) Claims against the company not acknowledged as debts. (ii) Uncalled liability on shares partly paid held as investment.				
	VI. CONTINGENT LIABILITIES NOT PROVIDED FOR : ‡(1) Arrears of Fixed Cumulative Dividends.				

‡The period for which the dividends are in arrear or if there

is more than one class of shares, the dividends on each such class are in arrear, shall be stated.

The amount shall be stated before deduction of income-tax, except that in the case of tax-free dividends the amount shall be shown free of income-tax and the fact that it is so shown shall be stated.

††The amount of any guarantees given by the company on behalf of directors or other officers of the company shall be stated and where practicable, the general nature and amount of each such contingent liability, if material, shall also be specified.

††(2) Other money for which the company is contingently liable.

## V. CASH AND BANK BALANCES.

The balances lying with Bankers on current accounts, call accounts and deposit accounts shall be shown separately.

## VI. MISCELLANEOUS EXPENDITURE AND LOSSES (to the extent not written off):

- (1) Preliminary expenses.
- (2) Expenses including Commission or Brokerage on under-writing or subscription of shares or debentures.
- (3) Discount allowed on the issue of shares or debentures.
- (4) Interest paid out of Capital during construction (also stating the rate of interest).
- (5) Profit and Loss Account. (only, if there is no General Reserve from which it can be deducted).

# NOTES

*General instructions for preparation of balance sheet.*—(a) The information required to be given under any of the items or sub-items in this Form if it cannot be conveniently included in the Balance Sheet itself shall be furnished in a separate Schedule or Schedules to be annexed to and to form part of the Balance Sheet. This is recommended when items are numerous.

(b) Annas and pies can also be given in addition to Rupees, if desired.

(c) In the case of subsidiary companies etc., the number of shares held by the ultimate holding company and its subsidiaries must to be separately stated.

(d) Short Term Loans will include those which are due for not more than one year as at the date of the Balance Sheet.

(e) Depreciation written off or provided shall be allocated under the different asset heads and deducted in arriving at the value of Fixed Assets.

(f) Dividends declared by subsidiary companies after the date of the Balance Sheet cannot be included unless they are in respect of a period which closed on or before the date of the Balance Sheet.

(g) Any reference to benefits expected from contracts not executed shall not be made in the Balance Sheet but shall be made in the directors' report.

(h) The debit balance in the Profit and Loss Account shall be set off against the General Reserve and where there is no General Reserve against future profits.

(i) As regards Loans and Advances (Group IV), amounts due by the Managing Agents, either severally or jointly with any other persons to be separately stated; the amounts due from other companies under the same Managing Agents should also be given with the names of the companies vide section 353; the maximum amount due from every one of these at any time during the year must be shown.

(j) Particulars of any redeemed debentures which the company has power to issue should be given.

(k) Where any of the company's debentures are held by a nominee or a trustee for the company, the nominal amount of the debentures and the amount at which they are stated in the books of the company shall be stated.

(l) A list of Investments separately classifying Trade Investments and Other Investments should be attached to the Balance Sheet stating the names of the bodies corporate (with the names of their managing agents, if any) in whose shares, debentures or bonds investments have been made and also stating the amounts in respect of each item; provided however that it shall not be necessary to give such particulars (a) in respect of Investments made by Managing Agency companies in managed companies' shares, debentures or bonds, or (b) in respect of Investments made by Investment companies, provided that particulars in respect of Investments in shares of Private Companies shall be given. The amount in respect of the holdings by Investment Companies in unquoted shares or shares of private limited companies shall be separately stated, specifying the name of each such company and the amount invested therein.

(m) If in the opinion of the Directors, any of the current assets have not a value on realisation in the ordinary course of business at least equal to the amount at which they are stated, the fact that the Directors are of that opinion shall be stated.

(n) Except in the case of the first Balance Sheet laid before the company after the commencement of the Act, the corresponding amounts for the immediately preceding financial year for all items shown in the Balance Sheet shall be also given in the Balance Sheet. The requirement in this behalf shall in the case of companies preparing quarterly or half-yearly accounts etc. relate to the Balance Sheet for the corresponding date in the previous year.

(o) The amounts to be shown under Sundry Debtors shall include the amounts due in respect of goods sold or services rendered or in respect of other contractual obligations but shall not include the amounts which are in the nature of loans or advances. A debt which remains unrealised after a period of three months from the date on which the debit in respect of the same arose shall be treated as a loan or an advance and the amounts in this behalf shall, for the purposes of the Balance Sheet, be treated as a loan or an advance and separately shown as such under the heading "Loans and Advances".

## PART II

*Requirements as to Profit and Loss Account.*

1. The provisions of this Part shall apply to the income and expenditure account referred to in sub-section (2) of section 195 of the Act, in like manner as they apply to a profit and loss account, but subject to the modification of references as specified in that sub-section.

2. The profit and loss account—

- (a) shall be so made out as clearly to disclose the result the working of the company during the period covered by the account ; and
- (b) shall disclose every material feature, including credits or receipts and debits or expenses in respect of non-recurring transactions or transactions of an exceptional nature.

3. The profit and loss account shall set out the various items relating to the income and expenditure of the company arranged under the most convenient heads ; and in particular, shall disclose the following information in respect of the period covered by the account:—

(i)(a) The turnover, that is, the aggregate amount for which sales are effected by the company.

(b) The selling agent's commission, brokerage and discount on sales, other than the usual trade discount.

(ii)(a) In the case of manufacturing concerns, the purchases of raw material, and the opening and the closing stocks of the goods produced.

(b) In the case of trading concerns, the purchases made, and the opening and the closing stocks.

(c) In the case of concerns rendering or supplying services, the gross income derived from services rendered or supplied.

(d) In the case of other concerns, the gross income derived under the different heads.

(iii) In the case of all concerns having works in progress, the amounts for which works remain to be executed at the commencement and at the end of the accounting period.

(iv) The amount provided for depreciation, renewals or diminution in value of fixed assets.

If such provision is not made by means of a depreciation charge, the method adopted for making such provision.

If no provision is made for depreciation, the fact that no provision has been made shall be stated.

(v) The amount of interest on the company's debentures and other fixed loans, that is to say, loans for fixed periods, stating separately the amount of interest, if any, payable to the managing director, the managing agent, and the manager, if any.



- (vi) The amount of charge for Indian income-tax and other Indian taxation on profits, including, where practicable, as Indian income-tax any taxation imposed elsewhere to the extent of the relief, if any, from Indian income-tax and distinguishing where practicable between income-tax and other taxation.
- (vii) The amounts provided for—
  - (a) repayment of share capital<sup>o</sup>; and
  - (b) repayment of loans.
- (viii) (a) The aggregate, if material, of any amounts set aside or proposed to be set aside, to reserves, but not including provisions made to meet any specific liability, contingency or commitment known to exist at the date as at which the balance sheet is made up.
- (b) The aggregate, if material, of any amounts withdrawn from such reserves.
- (ix)(a) The aggregate, if material, of the amounts set aside to provisions made for meeting specific liabilities, contingencies or commitments.
- (b) The aggregate, if material, of the amounts withdrawn from such provisions, as no longer required.
- (x) Expenditure incurred on each of the following items, separately for each item:—
  - (a) Consumption of stores and spare parts.
  - (b) Power and fuel.
  - (c) Rent.
  - (d) Repairs to buildings.
  - (e) Repairs to machinery.
  - (f) (1) Salaries, wages and bonus.
  - (2) Contribution to provident and other funds.
  - (3) Workmen and staff welfare expenses.
  - (g) Insurance.
  - (h) Rates and taxes, excluding taxes on income.
  - (i) Miscellaneous expenses.
- (xi)(a) The amount of income from investments, distinguishing between trade investments and other investments.
- (b) Other income by way of interest, specifying the nature of the income.
- (c) The amount of income-tax deducted if the gross income is stated under sub-paragraphs (a) and (b) above.
- (xii)(a) Profits or losses on investments.
- (b) Profits or losses in respect of transactions of a kind, not usually undertaken by the company or undertaken in circumstances of an exceptional or non-recurring nature, if material in amount.

- (c) Miscellaneous income.
  - (xiii)(a) Dividends from subsidiary companies.
  - (b) Provisions for losses of subsidiary companies.
  - (xiv) The aggregate amount of the dividends paid and proposed, and stating whether such amounts are subject to deduction of income-tax or not.
  - (xv) Amount, if material, by which any items shown in the profit and loss account are affected by any change in the basis of accounting.
4. The profit and loss account shall also contain, or give by way of a note the following further information:—
- (i) The total of the amounts payable to the managing agent, if any, whether as fees, percentages or otherwise for services rendered as managing agent or in any other capacity.
  - (ii) The total of the amounts payable whether as fees, percentages or otherwise to the directors, managing director or manager respectively as remuneration for services rendered as directors, managing director or manager or in any other capacity.
- If any director of the company is by virtue of any nomination made by it whether directly or indirectly, a director of any other company, any remuneration or other emoluments received by him for his own use whether as director or in any other capacity, in connection with the management of that other company shall be shown in a note at the foot of the account or in a statement annexed thereto.
- Particulars of the amounts received by individual directors shall be separately given for each of the subsidiaries of the company.
- (iii) The aggregate amount of any compensation paid to the managing agent, directors, the managing director or the manager or the former managing agent, directors, managing director, or manager of the company—
    - (a) as such, and
    - (b) in any other capacity,

for loss of office in connection with, or arising out of, their retirement from the office held by them in the company or from any office held by them in any other company by virtue of any nomination, made by the first-mentioned company, whether directly or indirectly.

Any compensation so paid to any person shall be sub-divided so as to show the amounts paid respectively—

    - (a) by the company,
    - (b) by the other company or each of the other companies, and
    - (c) by any other person.
  - (iv) The aggregate amount of any pension or gratuity paid to the directors, managing director, or manager, or former directors, managing director or manager of the company—

- (a) as such, and
- (b) in any other capacity.

Any pension or gratuity so paid to any person shall be sub-divided so as to show the amounts paid respectively—

- (a) by the company, and
- (b) by any subsidiary company.

5. The Central Government may direct that a company shall not be obliged to show the amount set aside to provisions other than those relating to depreciation, renewal or diminution in value of assets, if the Central Government is satisfied that the information should not be disclosed in the public interest and would prejudice the company, but subject to the condition that in any heading stating an amount arrived at after taking into account the amount set aside as such, the provision shall be so framed or marked as to indicate that fact.

6. (1) Except in the case of the first profit and loss account laid before the company after the commencement of the Act, the corresponding amounts for the immediately preceding financial year for all items shown in the profit and loss account shall also be given in the profit and loss account.

(2) The requirement in sub-clause (1) shall, in the case of companies preparing quarterly or half-yearly accounts, relate to the profit and loss account for the period which ended on the corresponding date of the previous year.

### PART III

#### *Interpretation*

7. (1) For the purposes of Parts I and II of this Schedule, unless the context otherwise requires,—

- (a) the expression “provision” shall, subject to sub-clause (2) of this clause, mean any amount written off or retained by way of providing for depreciation, renewals or diminution in value of assets, or retained by way of providing for any known liability of which the amount cannot be determined with substantial accuracy ;
- (b) the expression “reserve” shall not, subject as aforesaid, include any amount written off or retained by way of providing for depreciation, renewals or diminution in value of assets or retained by way of providing for any known liability ;
- (c) the expression “capital reserve” shall not include any amount regarded as free for distribution through the profit and loss account and the expression “revenue reserve” shall mean any reserve other than a capital reserve;

and in this clause the expression “liability” shall include all liabilities in respect of expenditure contracted for and all disputed or contingent liabilities.

(2) Where—

- (a) any amount written off or retained by way of providing for depreciation, renewals or diminution in value of assets, not being an amount written off in relation to fixed assets before the commencement of this Act; or

(b) any amount retained by way of providing for any known liability; is in excess of the amount which in the opinion of the directors is reasonably necessary for the purpose, the excess shall be treated for the purposes of this Schedule as a reserve and not as a provision.

8. For the purposes aforesaid, the expression "quoted investment" means an investment as respects which there has been granted a quotation permission to deal on a stock exchange, in or outside India, notified by or Central Government in this behalf in the Official Gazette; and the expression "unquoted investment" shall be construed accordingly.

---

## SCHEDULE VII

(See section 351 )

## PART I

*Specific powers of managing agent*

The managing agent of a company may, subject to any resolution passed by the directors and subject also to the provisions of the memorandum and articles of the company and of Part II of this Schedule, exercise, for and on behalf of the company, the following specific powers, namely:—

(1) To appoint, suspend and dismiss managers, assistants, and other officers and staff;

(2) To engage and dismiss workmen;

(3) To purchase, obtain or acquire all machinery, stores, goods and materials of any kind whatsoever which are necessary for the purposes of the company, and to sell the same when no longer required for those purposes;

(4) To sell any goods or articles manufactured or produced by the company;

(5) To institute, conduct, defend, compound, withdraw from, or abandon any legal proceedings,—

(a) by or against the company; or

(b) on behalf of or against any officer or employee of the company; or

(c) otherwise concerning the affairs of the company;

(6) To compound any claim or demand made by or against the company, including any debt due to or from it;

(7) To extend the time for the satisfaction of any claim or demand made by the company or for the payment of any debt due to it;

(8) To refer to arbitration any claim or demand made by or against the company;

(9) To observe and perform awards to which the company is a party;

(10) To act on behalf of the company in all matters arising out of the insolvency of any person who had any claim or demand to make against the company or against whom the company had any claim or demand to make;

(11) To act on behalf of the company in all matters arising out of the dissolution of any firm, which had any claim or demand to make against the company or against which the company had any claim or demand to make;

(12) To act on behalf of the company in all matters arising out of the winding up of any company—

(a) which had any claim or demand to make against the company of which he is the managing agent, or

(b) against which the company of which he is the managing agent had any claim or demand to make;

(13) To make, draw, endorse, sign, accept, negotiate or give, in connection with the business of the company, cheques, bills of lading, drafts, orders, bills of exchange, Government of India or other promissory notes, and other negotiable instruments;

(14) To sign and give all receipts, releases and other discharges for money payable to the company or for other claims or demands of the company;

(15) To exercise any powers or functions validly delegated to him by the directors of the company.

## PART II

### *Restrictions on powers of managing agent*

The managing agent shall not exercise any of the following powers except after obtaining the previous approval of the directors of the company, in regard to each such exercise:—

(1) Power to appoint (but not to suspend or dismiss) any person as manager of the company ;

(2) Power to appoint as an officer or member of the staff of the company, payable from its funds (as distinguished from the funds of the managing agent, or from out of any remuneration payable to him by the company), any person—

(a) on a remuneration or scale of remuneration exceeding the limits laid down by the directors in this behalf ; or

(b) who is a relative of the managing agent, or where the managing agent is a firm, of any partner in the firm, or where the managing agent is a private company, of any director or member of such company ;

*Explanation.*—Two persons shall not be deemed to be “relatives” within the meaning of clause (b) unless they are husband and wife, or unless the one or the spouse of the one is related to the other or the spouse of the other, whether by legitimate or illegitimate descent or by adoption and whether by full blood or by half blood, in any of the following ways, namely:—

(i) as parent and child;

(ii) as grandparent and grandchild;

(iii) as brothers or sisters, or as brother and sister;

(iv) as uncle or aunt, and nephew or niece;

(v) as first cousins, that is to say, as persons having a common grand-parent.

(3) Power to purchase capital assets for the company except where the purchase price is within the limits prescribed by the directors of the company in this behalf ;

(4) Power to sell the capital assets of the company, except where the sale price is within the limits prescribed by the directors of the company in this behalf ;

(5) Power to compound, or sanction the extension of time for the satisfaction or payment of, any claim or demand of the company against (including any debt claimed to be due to it from) the managing agent or any associate of the managing agent;

(6) Power to compound any claim or demand made against the company (including any debt claimed to be due from it) by the managing agent or any associate of the managing agent.

## SCHEDULE VIII

(See section 326).

*Declarations to be made by firms, private companies and public companies, acting as managing agents.*

*Definition*

1 (1) In this Schedule, "relevant date" means—

- (a) in the case of a firm or body corporate holding office at the commencement of this Act as the managing agent of a company, the date of such commencement ; and
- (b) in the case of a firm or body corporate appointed or re-appointed after the commencement of this Act as the managing agent of a company, the date of such appointment or re-appointment.

(2) For the purposes of sub-clause (1), the expressions "re-appointment" and "re-appointed" shall have the same meaning as they have for the purposes of sub-section (1) of section 309.

*Firms*

2. Every managing agency firm shall file with each company, whether public or private, of which it acts as managing agent, a declaration specifying—

- (a) the names of the partners constituting the firm on the relevant date ;
- (b) the share, or the extent of the interest, of each partner in the firm on the relevant date ;
- (c) the names of persons, if any, other than partners, who are interested, on the relevant date in any share of, or amount forming part of the remuneration payable to the managing agent by the company ; and the extent of the interest of each such person in such remuneration.

3. The declaration shall be signed by a partner of the firm and shall be filed within one month of the relevant date.

4. If any change occurs in regard to any of the matters specified in clause 2 after the relevant date, a declaration specifying the change and signed by a partner of the firm shall be filed, within three weeks of the occurrence of the change, with each of the companies referred to in that clause.

*Private companies*

5. Every private company which acts as managing agent of any other company or companies, whether public or private, shall file with each of those companies, a declaration specifying—

- (a) the names of the members of the private company on the relevant date ;
- (b) where the private company has a share capital, the shares held by each member of the company, on that date ;
- (c) where the private company has no share capital, the extent of the interest of each member of the company in it on that date ;
- (d) the manner in which each such member holds his shares or interest, that is to say, whether he holds the same beneficially or on behalf of or in trust for any other person ; and in the latter case,

the name or names of the person or persons on whose behalf or in trust for whom the shares or interest is held and the extent of the interest of each such person ;

- (e) the names of the directors of the private company and the name of its managing director, if any ;
- (f) the names of persons, if any, who are interested in any share of, or amount forming part of, the remuneration payable to the private company by the company under its management, otherwise than as members of the private company ; and the extent of the interest of each such person in such remuneration ;
- (g) that no arrangement has been entered into to the knowledge of the private company, under which the control of the private company is vested in any persons other than the members of the company and the persons referred to in sub-clause (d) :

Provided that the obligation to furnish information on the matters specified in sub-clauses (d) and (f) shall extend only to such particulars relating to those matters as are within the knowledge of the private company.

6. The declaration shall be signed by a director of the company and shall be filed within two months of the relevant date.

7. If, to the knowledge of the company, there is a sale or transfer of any shares in the company or an agreement has been entered into, for the sale or transfer of any such shares, or any other change occurs in regard to any of the matters specified in clause 5, a declaration specifying the sale, transfer, agreement or change and signed by a director of the company shall be filed, within six weeks thereof, with each of the companies referred to in that clause.

8. Where any shares are sold or transferred or agreed to be sold or transferred, the declaration referred to in clause 7 shall specify the name of the person or persons who part with or have agreed to part with the shares and also the name of the person or persons who acquire or have agreed to acquire them, with full details of the sale, transfer or agreement.

#### *Other bodies corporate*

9. The provisions of clauses 5 to 8 shall apply to every body corporate (other than a private company) acting as the managing agent of any company, unless it is exempt from the operation of the provisions of this Schedule by virtue of section 328.

#### *General*

10. (1) All declarations filed with any company in pursuance of this Schedule shall be open to inspection, and extracts may be taken therefrom and copies thereof may be required, by any member of the company to the same extent, in the same manner and on payment of the same fees as is applicable in respect of the register of members of the company.

(2) All such declarations shall also be open to inspection by any director of the company, free of charge.



## SCHEDULE IX

FORM OF PROXY  
[Sec section 167 (6)]

## I

".....Name of Company,  
I.....of.....in the district of ..  
We  
.....being a member of the above-named Company  
members  
hereby appoint.....of.....in the district of.....or failing  
him,.....of.....in the district of.....  
.....as my proxy to vote for me on my behalf  
our us our  
at the annual general meeting  
general meeting (not being an annual general meeting  
of the company to be held on the....day of.....and at any  
adjournment thereof.

Signed this.....day of ....."

## †II

".....Name of Company.....  
I....., of.....  
We  
in the district of....., being a member of the  
members  
above-named Company, hereby appoint.....of.....  
in the district of....., or failing him.....of.....  
.....in the district of....., as my  
our  
proxy to vote for me on my behalf at the  
us our  
annual general meeting  
general meeting (not being an annual general meeting)

of the company, to be held on the.....day of.....19....,  
and at any adjournment thereof.

Signed this.....day of .....19...

†This form is to be used <sup>\*in favour of</sup> the resolution. Unless otherwise  
<sup>\*against</sup>

instructed, the proxy will vote as he thinks fit.

\*Strike out whichever is not desired".

## SCHEDULE X

(See sections 11, 208 and 595)

## FORM A.

## FORM OF MEMORANDUM OF ASSOCIATION OF A COMPANY LIMITED BY SHARES

**1st.**—The name of the company is “The Eastern Steam Packet Company, Limited”.

**2nd.**—The registered office of the company will be situated in the State of Bombay.

**3rd.**—The objects for which the company is established are “the conveyance of passengers and goods in ships or boats between such places as the company may from time to time determine, and the doing of all such other things as are incidental or conducive to the attainment of the above object”.

**4th.**—The liability of the members is limited.

**5th.**—The share capital of the company is two hundred thousand rupees, divided into one thousand shares of two hundred rupees each.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names, addresses and descriptions of subscribers.	Number of shares taken by each subscriber.
1. A. B. of....., merchant . . . . .	200
2. C. D. of....., merchant . . . . .	25
3. E. F. of....., merchant . . . . .	30
4. G. H. of....., merchant . . . . .	40
5. I. J. of....., merchant . . . . .	15
6. K. L. of....., merchant . . . . .	5
7. M. N. of....., merchant . . . . .	10
Total shares taken . . . . .	325

Dated.....day of.....19 .

Witness to the above signatures

X. Y. of.....

## FORM B

## FORM OF MEMORANDUM AND ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE, AND NOT HAVING A SHARE CAPITAL.

*Memorandum of Association*

**1st.**—The name of the company is “The Mutual Calcutta Marine Association, Limited”.

**2nd.**—The registered office of the company will be situate in the State of West Bengal.

**3rd.**—The objects for which the company is established are “ the mutual insurance of ships belonging to members of the company, and the doing of all such other things as are incidental or conducive to the attainment of the above object”.

**4th.**—The liability of the members is limited.

**5th.**—Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year after he ceases to be a member, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and the costs, charges and expenses of winding up and for the adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding one hundred rupees.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association.

Names, addresses and descriptions of subscribers.

1. A.B. of
2. C. D. of
3. E.F. of
4. G.H. of
5. I.J. of
6. K. L. of
7. M. N. of

Dated the.....day of.....

Witness to above signatures.....X, Y. of

#### ARTICLES OF ASSOCIATION TO ACCOMPANY PRECEDING MEMORANDUM OF ASSOCIATION

##### *Interpretation*

1. (1) In these articles—

- (a) “ the Act ” means the Companies Act, 1954.
- (b) “ the seal ” means the common seal of the company.
- (c) “ secretary ” means any person appointed to perform the duties of the secretary of the company.

(2) Unless the context otherwise requires, words or expressions contained in these articles shall bear the same meanings as in the Act or any statutory modifications thereof in force at the date at which these articles become binding on the company

(3) The General Clauses Act, 1897(X of 1897) shall apply to the interpretation of these regulations, as it applies to the interpretation of a Central Act.

##### *Members*

2. The number of members with which the company proposes to be registered is 500, but the directors may, from time to time, whenever the company or the business of the company requires it, register an increase of members.

3. The subscribers to the memorandum of association and such other persons as the directors shall admit to membership shall be members of the company.

*General Meetings*

4. All general meetings other than annual general meetings shall be called extraordinary general meetings.

5. (1) The directors may, whenever they think fit, call an extraordinary general meeting.

(2) If at any time there are not within India directors capable of acting, who are sufficient in number to form a quorum, any director or any two members of the company may call an extraordinary general meeting in the same manner as nearly as possible, as that in which such a meeting may be called by the directors.

*Proceedings at General Meetings*

6. (1) No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business.

(2) Save as herein otherwise provided, three members present in person shall be a quorum.

7. (1) If within half an hour from the time appointed for holding the meeting a quorum is not present, the meeting, if called upon the requisition of members, shall be dissolved.

(2) In any other case, the meeting shall stand adjourned to the same day in the next week at the same time and place or to such other day and at such other time and place as the directors may determine.

(3) If at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the members present shall be a quorum.

8. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company.

9. If there is no such chairman, or if he is not present within fifteen minutes after the time appointed for holding the meeting, or is unwilling to act as chairman of the meeting, the directors present shall elect one of their number to be chairman of the meeting.

10. If at any meeting no director is willing to act as chairman or if no director is present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose one of their number to be chairman of the meeting.

11. (1) The chairman may, with the consent of any meeting at which a quorum is present and shall if so directed by the meeting, adjourn the meeting from time to time and from place to place.

(2) No business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

(3) When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.

(4) Save as aforesaid, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

12. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place, or at which the poll is demanded, shall be entitled to a second or casting vote.

13. Any business other than that upon which a poll has been demanded may be proceeded with, pending the taking of the poll.

#### *Votes of members*

14. Every member shall have one vote.

15. A member of unsound mind, or in respect of whom an order has been made by any Court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee or other legal guardian, and any such committee or guardian may, on a poll, vote by proxy.

16. No member shall be entitled to vote at any general meeting unless all sums presently payable by him to the company have been paid.

17. (1) No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered, and every vote not disallowed at such meeting shall be valid for all purposes.

(2) Any such objection made in due time shall be referred to the chairman of the meeting, whose decision shall be final and conclusive.

18. A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or insanity of the principal or the revocation of the proxy or of the authority under which the proxy was executed, or the transfer of the shares in respect of which the proxy is given :

Provided that no intimation in writing of such death, insanity, revocation or transfer shall have been received by the company at the office before the commencement of the meeting or adjourned meeting at which the proxy is used.

#### *Directors*

19. The number of the directors and the names of the first directors shall be determined in writing by the subscribers of the memorandum of association or a majority of them.

20. (1) The remuneration of the directors shall, in so far as it consists of a monthly payment, be deemed to accrue from day to day.

(2) The directors may also be paid all travelling, hotel and other expenses properly incurred by them—

(a) in attending and returning from meetings of the directors or any committee of the directors or general meetings of the company ; or

(b) in connection with the business of the company.

#### *Proceedings of Meetings of Directors*

21. (1) The directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings, as they think fit.

(2) A director may, and the managing agent, manager or secretary on the requisition of a director shall, at any time, summon a meeting of the directors.

22. (1) Questions arising at any meeting of the directors shall be decided by a majority of votes.

(2) In case of an equality of votes, the chairman shall have a second or casting vote.

23. The continuing directors may act notwithstanding any vacancy in their body; but, if and so long as their number is reduced below the quorum fixed by the Act for a meeting of directors, the continuing directors or director may act for the purpose of increasing the number of directors to that number, or of summoning a general meeting of the company, but for no other purpose.

24. (1) The directors may elect a chairman of their meetings and determine the period for which he is to hold office.

(2) If no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the meeting, the directors present may choose one of their number to be chairman of the meeting.

25. (1) The directors may, subject to the provisions of the Act, delegate any of their powers to committee consisting of such member or members of their body as they think fit.

(2) Any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on it by the directors.

26. (1) A committee may elect a chairman of its meetings.

(2) If no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the meeting, the members present may choose one of their number to be chairman of the meeting.

27. (1) A committee may meet and adjourn as it thinks proper.

(2) Questions arising at any meeting of a committee shall be determined by a majority of votes of the members present, and in case of an equality of votes, the chairman shall have a second or casting vote.

28. All acts done by any meeting of the directors or of a committee of directors, or by any person acting as a director, shall, notwithstanding that it may be afterwards discovered that there was some defect in the appointment of any one or more of such directors or of any person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such director or such person had been duly appointed and was qualified to be a director.

29. Save as otherwise expressly provided in this Act, a resolution in writing, signed by all the directors or all the members of a committee of directors for the time being entitled to receive notice of a meeting of the directors or committee of directors, shall be as valid and effectual as if it had been passed at a meeting of the directors or committee of directors, duly convened and held

*Manager or Secretary*

30. (1) A manager or secretary may be appointed by the directors for such term, at such remuneration and upon such conditions as they may think fit ; and any manager or secretary so appointed may be removed by them.

(2) A director may be appointed as manager or secretary.

31. A provision of the Act or these regulations requiring or authorising a thing to be done by or to a director and the manager or secretary shall not be satisfied by its being done by or to the same person acting both as director and as, or in place of, the manager or secretary.

*The Seal.*

32. (1) The directors shall provide for the safe custody of the seal.

(2) The seal of the company shall not be affixed to any instrument except by the authority of a resolution of the board of directors, and in the presence of at least two directors and of the secretary or such other person as the directors may appoint for the purpose ; and those two directors and secretary or other person as aforesaid shall sign every instrument to which the seal of the company is so affixed in their presence.

*Names, Addresses and Descriptions of Subscribers*

1. A. B. of
2. C. D. of
3. E. F. of
4. G. H. of
5. I. J. of
6. K. L. of
7. M. N. of

Dated the.....day of.....

Witness to the above signatures.....X. Y. of

FORM C

MEMORANDUM AND ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY  
GUARANTEE, AND HAVING A SHARE CAPITAL.

*Memorandum of Association*

1st.—The name of the company is “ The Snowy Range Hotel Company, Limited ”.

2nd.—The registered office of the company will be situate in the State of West Bengal.

3rd.—The objects for which the company is established are “ the facilitating of traveling in the Snowy Range, by providing hotels and conveyances by sea and by land for the accommodation of travellers and the doing of all such other things as are incidental or conducive to the attainment of the above object ”.

**4th.**—The liability of the members is limited.

**5th.**—Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year after he ceases to be a member for payment of the debts and liabilities of the company, contracted before he ceases to be a member, and the costs, charges and expenses of winding up the same and for the adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding fifty rupees.

**6th.**—The share capital of the company shall consist of five hundred thousand rupees, divided into five thousand shares of one hundred rupees each.

We, the several persons whose names and addresses are subscribed are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Addresses and Descriptions of Subscribers		Number of shares taken by each subscriber
1. A. B. of	Merchant	200
2. C. D. of	„	25
3. E. F. of	„	30
4. G. H. of	„	40
5. I. J. of	„	15
6. K. L. of	„	5
7. M. N. of	„	10
Total shares taken		325

Dated the..... day of.....19....

Witness to the above signatures.

X. Y. of

#### ARTICLES OF ASSOCIATION TO ACCOMPANY PRECEDING MEMORANDUM OF ASSOCIATION

1. The number of members with which the company proposes to be registered is 100, but the directors may from time to time register an increase of members.

2. All the articles of Table A in Schedule I of the Companies Act, 1954, shall be deemed to be incorporated with these articles and to apply to the company.

Names Addresses and Descriptions of Subscribers.	
1. A. B. of	Merchant
2. C. D. of	„
3. E. F. of	„



4.	G. H. of . . . . .	Merchant
5.	I. J. of . . . . .	„
6.	K. L. of . . . . .	„
7.	M. N. of . . . . .	„

Dated the.....day of.....19 .

Witness to the above signatures.

X. Y. of

### FORM D

#### MEMORANDUM AND ARTICLES OF ASSOCIATION OF AN UNLIMITED COMPANY

##### *Memorandum of Association*

**1st**—The name of the company is “ The Patent Stereotype Company ”.

**2nd**—The registered office of the company will be situate in the State of West Bengal.

**3rd**—The objects for which the company is established are “ the working of a patent method of founding and casting stereotype plates of which method P. Q., of Bombay, is the sole patentee ”.

We, the several persons whose names are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Addresses and Descriptions of Subscribers		Number of shares taken by each subscriber
1.	A. B. of . . . . .	3
2.	C. D. of . . . . .	2
3.	E. F. of . . . . .	1
4.	G. H. of . . . . .	2
5.	I. J. of . . . . .	2
6.	K. L. of . . . . .	1
7.	M. N. of . . . . .	1
Total shares taken . . .		12

Dated the.....day of.....19 .

Witness to the above signatures

X. Y. of

#### ARTICLES OF ASSOCIATION TO ACCOMPANY PRECEDING MEMORANDUM OF ASSOCIATION

1. The number of members with which the company proposes to be registered is 20, but the directors may from time to time register an increase of members.

2. The share capital of the company is twenty thousand rupees, divided into twenty shares of one thousand rupees each.

## 3. The company may by special resolution—

- (a) increase the share capital by such sum to be divided into shares of such amount as the resolution may prescribe;
- (b) consolidate its shares into shares of a larger amount than its existing shares ;
- (c) sub-divide its shares into shares of a smaller amount than its existing shares ;
- (d) cancel any shares which at the date of the passing of the resolution have not been taken or agreed to be taken by any person ;
- (e) reduce its share capital in any way.

4. All the articles of Table A in Schedule I to the Companies Act 1954, except articles (37, 38, 39, 40, 45, 46 and 47) shall be deemed to be incorporated with these articles and to apply to the company.

*Names, Addresses and descriptions of Subscribers.*

1.	A. B. of	.	.	.	.	Merchant.
2.	C. D. of	.	.	.	.	"
3.	E. F. of	.	.	.	.	"
4.	G. H. of	.	.	.	.	"
5.	I. J. of	.	.	.	.	"
6.	K. L. of	.	.	.	.	"
7.	M. N. of	.	.	.	.	"

*Dated the.....day of .....19 ..*

Witness to the above signatures.

X. Y. of

### FORM E

#### FORM OF STATEMENT TO BE PUBLISHED BY INSURANCE COMPANIES AND DEPOSIT, PROVIDENT OR BENEFIT SOCIETIES.

\*The share capital of the company is Rs.....divided into... shares of Rs..... each.

The number of shares issued is..... Calls to the amount of Rs..... per share have been made, under which the sum of Rs. ....has been received.

The liabilities of the company on the thirty-first day of December (or thirtieth day of June) were—

Debts owing to sundry persons by the company :

Under decree, Rs.

On mortgages or bonds, Rs.

On notes, bills or hundis, Rs.

On other contracts, Rs.

On estimated liabilities, Rs.

\*If the company has no capital divided into shares, the portion of the statement relating to capital and share must be omitted.

The assets of the company on that day were

Government securities [stating them], Rs

Bills of exchange, hundis, and promissory notes, Rs.

Cash at the Bankers, Rs.

Other securities, Rs.

---

## SCHEDULE XI

(See section 598)

Provisions of the Indian Companies Act, 1913 (VII of 1913) inserted by the Indian Companies (Amendment) Act, 1951 (LII of 1951), as they are to continue to be in force for a period of three years.

## I

86]. *Restrictions on appointment, re-appointment and number of directors, their remuneration, etc.*—(1) Notwithstanding anything to the contrary contained in any other provision of this Act or in the memorandum or articles of, or any agreement with, or any resolution passed in general meeting by, or by the directors of, any company,—

- (a) any amendment in the memorandum or articles, or any variation in any agreement or resolution—
  - (i) which relates to the appointment or re-appointment of a managing director or of a director not liable to retire by rotation, or
  - (ii) which purports to increase or has the effect of increasing, whether directly or indirectly, the remuneration of a managing director or any other director, or
- (b) any increase in the number of its directors except, in the case of a company which was in existence on the 21st day of July, 1951, an increase which was within the maximum limits permissible under the memorandum and articles as in force on that date, and in the case of a company which came into existence after that date, an increase which is within the maximum limits permissible under its memorandum and articles as first registered, or
- (c) the appointment of a managing director, in the case of an existing company, for the first time after the commencement of this Act, and in the case of a new company not having a managing director at the time of its incorporation or within three months thereafter, for the first time after those three months, or
- (d) the re-appointment or appointment of a managing director after the commencement of this Act, if the terms of such re-appointment or appointment purport to increase or have the effect of increasing whether directly or indirectly, the remuneration which the managing director or the previous managing director, as the case may be, was receiving immediately before such re-appointment or appointment,

shall not have any effect unless approved by the Central Government and shall become void if and in so far as it is disapproved by that Government.

(2) Where a complaint is made to the Central Government by the managing director or any other director, or the managing agent, of a company that as a result of a change which has taken place or is likely to take place in the ownership of any shares held in the company, a change in the board of directors is likely to take place which (if allowed) would affect prejudicially the affairs of the company, the Central Government may, if satisfied, after

such inquiry as it thinks fit to make that it is just and proper so to do, by order direct that no resolution passed or action taken to effect a change in the board of directors after the date of the complaint shall have effect unless confirmed by the Central Government ; and any such order shall have effect notwithstanding anything to the contrary contained in any other provision of this Act or in the memorandum or articles of, or any agreement with, or any resolution passed in general meeting by, or by the directors of, the company.

The Central Government shall have power when any such complaint is received by it, to make an interim order to the effect set out in this subsection, before making or completing the inquiry aforesaid.

(3) Nothing contained in sub-sections (1) and (2) shall apply to a private company, unless it is a subsidiary of a public company.

## II

**87AA. Restrictions on extension of term of office of managing agents.**—In the case of a company managed by a managing agent, any amendment in the memorandum or articles of, or any variation in any agreement with, or any resolution passed in general meeting by, or by the directors of, the company, which, after the commencement of this Act, purports to extend, or has the effect of extending, the term of office of a managing agent holding office as such on the 21st day of July, 1951, shall, not have any effect unless approved by the Central Government and shall become void if and in so far as it is disapproved by that Government: notwithstanding anything to the contrary contained in any other provision of this Act or in the memorandum or articles, or in any such agreement or resolution:

Provided that nothing contained in this section shall apply to a private company, unless it is a subsidiary of a public company.

## III

### **87 B. (c). Second Proviso.**

In the case of a public company managed by a managing agent, a transfer of his office by the managing agent shall not have any effect unless approved by the Central Government and shall become void if and in so far as it is disapproved by that Government.

## IV

**87BB. Changes in constitution of managing agency firm or corporation not to be given effect to without approval of Central Government.**—(1) Notwithstanding anything to the contrary contained in any other provision of this Act or in the memorandum or articles of, or any agreement with, or any resolution passed in general meeting by, or by the directors of, any company, where the managing agent of the company is a firm or a body corporate, any change in the constitution of the firm or body corporate shall require the previous approval of the Central Government ; and if the change is given effect to without such approval having been obtained, the managing agent shall cease to act as such from the date on which the change is given effect to, and shall, subject to the provisions of this Act, again become entitled to act as such if, and only if, the approval of the Central Government is accorded to the change.

*Explanation I.*—Where the managing agent is a firm, a change in its constitution means any change among the partners of the firm, not caused by—

- (a) the death of a partner, or
- (b) the retirement of a partner on the expiry, by efflux of time, of his term of office as on the 21st day of July, 1951, or if he became a partner after that date, as fixed at the time when he became a partner, or
- (c) the appointment of a new partner in the place of a partner who has died or has retired on the expiry of his term of office as aforesaid.

*Explanation II.*—Where the managing agent is a body corporate, a change in its constitution means—

- (a) the conversion of the managing agent from a private to a public company or from a public to a private company, or
- (b) any change among the directors or managers of the body corporate, not caused by—
  - (i) the death of a director or manager ;
  - (ii) the retirement of a director or manager on the expiry by efflux of time of his term of office as on the 21st day of July, 1951, or if he became a director or manager after that date, as fixed at the time when he became a partner or manager ; or
  - (iii) the appointment of a new director or manager in the place of a director or manager who has died or has retired on the expiry of his term of office as aforesaid ; or
- (c) save as provided in sub-section (2), any change in the registered ownership of shares in the corporation, or in the case of a corporation not having a share capital, any change in its membership, not caused by the death of any shareholder or member or his replacement by his heir.

(2) Where a managing agent is a public company, the shares whereof are for the time being dealt in, or quoted by, any of the recognised stock exchanges of India as notified by the Central Government in the Official Gazette, no change in the registered ownership of the shares of the company shall be deemed to be a change in its constitution within the meaning and for the purposes of sub-section (1), unless the Central Government, by notification in the Official Gazette, otherwise directs.

(3) No such notification shall be issued in respect of any company unless the Central Government is of opinion that any change in the registered ownership of its shares has taken place or is likely to take place, which has affected or is likely to affect prejudicially the affairs of any company which is being managed by the managing agent.

(4) Nothing in sub-section (1) shall apply to a private company unless it is a subsidiary of a public company.

## V

**87CC. Restrictions on appointment, re-appointment or remuneration of managing agents.**—(1) Notwithstanding anything to the

contrary contained in any other provision of this Act or in the memorandum or articles of, or in any agreement with, or in any resolution passed in general meeting by, or by the directors of, any company,—

- (a) any appointment or re-appointment of a managing agent for the company, or
- (b) any amendment in the memorandum or articles, or any variation in any agreement or resolution, which relates to the appointment or re-appointment of a managing agent or which purports to increase or has the effect of increasing, whether directly or indirectly, the remuneration of the managing agent,

shall not have any effect unless approved by the Central Government, and shall be void if and in so far as it is disapproved by that Government.

(2) Nothing contained in sub-section (1) shall apply to a private company, unless it is a subsidiary of a public company.

## VI

**289B. Power of Central Government to appoint advisory commission and to make rules in respect of certain matters.**—(1) For the purpose of advising it in relation to any matter arising out of the foregoing provisions of this Schedule, the Central Government may constitute a Commission consisting of not more than three persons with suitable qualifications and appoint one of them to be the Chairman of the Commission.

(2) It shall be the duty of the Commission to inquire into and advise the Central Government on all applications for approval made to the Central Government under any of the provisions referred to in sub-section (1) and on all other matters which may be referred to it by the Central Government under any of those provisions.

(3) Every application for approval made to the Central Government under any of the provisions aforesaid shall be in such form as may be prescribed.

(4) Before any application for approval is made to the Central Government, there shall be issued by or on behalf of the company a general notice to the members, indicating the nature of the approval sought, and such notice shall be published at least once in the principal language of the district in which the registered office of the company is situate in a newspaper circulating in that district, and at least once in English in a newspaper similarly circulating in the district, and copies of the notices, together with a certificate by the company as to the due publication thereof, shall be attached to the application for approval:

Provided that nothing in this sub-section shall apply to a private company which is not the managing agent of a public company.

(5) For the purpose of making any inquiry under this section, the Commission may—

- (a) require the production before it of any books or other documents in the possession, custody or control of the company relating to any matter under inquiry ;
- (b) call for any further information or explanation, if the Commission is of opinion that such information or explanation is necessary

in order that the books or other documents produced before it may afford full particulars of the matter to which they purport to relate ;

- (c) with such assistants as it thinks necessary, inspect any books or other documents so produced and make copies thereof or take extracts therefrom ;
- (d) require any managing director or any other director, managing agent, manager, or other officer of the company or any shareholder or any other person who, in the opinion of the Commission, is likely to furnish information with respect to the affairs of the company relating to any matter under inquiry, to appear before it, and examine such person on oath or require him to furnish such information as may be required and administer an oath accordingly to the person for the purpose.

(6) If any person refuses or neglects to produce any book or other document in his possession or custody which he is required to produce under this section or to answer any question put to him relating to any matter under inquiry, he shall be punishable with imprisonment for a term which may extend to two years and shall also be liable to fine.

(7) No suit or other legal proceeding shall lie against the Central Government, the Commission or the Chairman or any member of the Commission in respect of anything which is in good faith done or intended to be done in pursuance of this section or of the provisions referred to in sub-section (1) or of any rules or orders made thereunder.

## VII

(1) In the provisions contained in this Schedule, "this Act" means the Companies Act, 1954.

(2) Anything done or deemed to have been done, or any action taken or deemed to have been taken, before the commencement of this Act, in the exercise of any powers conferred by or under section 86J or 87AA, the further proviso to clause (c) of section 87B, or section 87BB, 87CC or 289B of the Indian Companies Act, 1913 (VII of 1913) shall be deemed to have been done or taken in the exercise of the powers conferred by or under the provisions contained in this Schedule, as if they were in force on the day on which such thing was done or such action was taken.



## SCHEDULE XII

*(See section 599).*

## Enactments repealed

Year	No.	Subject or short title	Extent of repeal
1	2	3	4
1913	VII	The Indian Companies Act, 1913.	The whole except to the extent specified in section 598 and Schedule XI.
1951	LII	The Indian Companies (Amendment) Act, 1951.	Do.
1952	LI	The Indian Companies (Amendment) Act, 1952.	The whole.

STATEMENT OF OBJECTS AND REASONS

The object of this Bill is to amend and consolidate the law relating to Companies. The last major amendment of the Indian Companies Act, 1913 (VII of 1913) was undertaken in 1936 when the Indian Companies (Amendment) Act, 1936 (XXII of 1936) was passed. At the end of World War II the need was felt for a further extensive revision of the Companies Act. Apart from the experience gained of the actual working of the Amendment Act of 1936, which disclosed the necessity for an early amendment of some of its provisions, many changes had taken place in the intervening years in the organisation and management of joint stock companies, and over a wide sector that was dominated by new elements in trade and industry, the character of company management had also materially altered. Further, at the end of the War, the Company Law Amendment Committee in the United Kingdom, more familiarly known as the Cohen Committee, had submitted its Report after a laborious enquiry spread over two years. This Report recommended several far-reaching changes in the English Companies Act, 1929. As the Indian company law had been always largely based on the prevailing English law, the then Government felt that the time was ripe for a further review of the Indian Companies Act. A good deal of exploratory work was done between 1946 and 1950. Two distinguished company lawyers were successively appointed to advise Government on the broad lines on which the Indian Companies Act should be revised. The recommendations of these two lawyers were further examined in the then Ministry of Commerce, and certain tentative departmental views which emerged were circulated in a memorandum to the general public for eliciting opinion on them. Many representations on this memorandum were duly received from trade and industrial organisations, learned bodies, associations, State Governments and the general public. At the end of 1950, the Government of India appointed a Committee under the chairmanship of Shri C. H. Bhabha to go into the entire question of the revision of the Indian Companies Act, with particular reference to its bearing on the development of Indian trade and industry. This Committee examined a large number of witnesses in different parts of the country and submitted its Report in March 1952. The Report was circulated to all State Governments, Chambers of Commerce, many trade associations and several learned bodies for an expression of their views on the recommendations contained in it. A special officer was also appointed in the Department of Economic Affairs at the same time to examine the Report and, on the basis of the views expressed by these organised trade and other associations and the general public, to submit proposals to Government for the revision of the Indian Companies Act.

2. The present Bill is based largely on the recommendations of the Company Law Committee modified in a few particulars by the views expressed on these recommendations. The main principles underlying these recommendations are as follows :

- (i) the provisions of the law both in regard to the formation and management of joint stock companies should be such as would ensure the maintenance of a minimum standard of good behaviour in company promotion and management without imposing needlessly irksome or rigid rules which may hamper legitimate business or affect initiative or enterprise ;
- (ii) the law should provide for the fullest possible disclosure in prospectuses or statements in lieu of prospectuses issued both before

and after a company is formed, and failure to make such disclosure should be visited with effective penalties ;

- (iii) company accounts should be prepared in such a way as to disclose all facts which are material to a full understanding of the manner in which companies are worked ;
- (iv) company meetings should be called and conducted in such a way as to ensure that shareholders receive all reasonable facilities for exercising an intelligent judgment on the activities of the management ;
- (v) the provisions for investigation into the affairs of a company should be so designed as to enable an appropriate authority to intervene in its affairs not merely when an offence has been committed, but also when it is established that the affairs of a company are being managed in a manner prejudicial to the shareholders of the company or oppressive to any substantial portion of them or when such investigation is otherwise necessary in the public interest ;
- (vi) the law should also provide for the establishment of an appropriate authority not merely for enforcing the provisions of the Companies Act or for carrying out the investigations which may be necessary under it, but also for generally overseeing the administration of the Act and for exercising in the public interest that reserve of authority which must necessarily vest in some organ of Government.

The provisions of the Bill in its different Parts follow largely from the above principles. The major changes in the present Indian Companies Act which the Bill introduces thus relate to the following topics :

- (a) the promotion and formation of companies (clauses 50 to 74) ;
- (b) the capital structure of companies (clauses 79 to 83) ;
- (c) company meetings and procedure (clauses 158 to 189) ;
- (d) the presentation of company accounts, their audit, and the powers and duties of auditors (clauses 195 to 218) ;
- (e) the inspection and investigation of the affairs of companies (clauses 219 to 235) ;
- (f) the constitution of boards of directors, and the powers and duties of directors, managing directors and managers (clauses 236 to 306) ;
- (g) the appointment of managing agents, terms and conditions of their service, their remuneration, the powers of managing agents *vis-a-vis* directors, and the activities of managing agents in regard to borrowings, loans, contracts, sales and purchases (clauses 307 to 359) ; and
- (h) the administration of company law.

Most of the new provisions contained in the Bill on all these points are self-explanatory, and in the case of almost all these provisions the relevant notes on clauses have indicated the recommendations of the Company Law Committee on which they are based.

3. As has been already mentioned, in a few particulars, the provisions of the Bill have deviated from the recommendations of the Company Law Committee. These deviations are, however, of a minor nature, and the notes on clauses have duly indicated and explained them. There is, however, one important deviation from the recommendations of the Company Law Committee which needs special mention. The Company Law Committee devoted a good deal of space in its Report to problems of organisation and administration, and recommended that the Central Government should not only resume its responsibility for the administration of joint stock companies which it had delegated to the State Governments, but that a statutory authority at the Centre, to be called "Corporate Investment and Administration Commission", should be set up under the new Act for the administration of the company law as well as for the discharge of other related functions, *e.g.* capital issue control and regulation of stock exchanges when a Central measure for this latter purpose was passed. Action has already been taken on the first recommendation of the Company Law Committee. The State Governments have been addressed regarding the intention of the Central Government to resume its powers under the Indian Companies Act and the constitution of a Central Organisation under the administrative control of the Department of Economic Affairs has been sanctioned. It is, however, proposed that the question of conferring statutory status on this Organisation, if so necessary, may be considered after this Central Organisation has been set up and functioned for a reasonable period. For present therefore the duties and responsibilities which the Company Law Committee visualised for the statutory authority would be carried on by the new departmental organisation.

In the light of the recent experience of the Central Government, provision has also been made in the Bill in respect of one or two matters which were not covered by the recommendations of the Company Law Committee but which are considered to be of sufficient importance to the working of joint stock companies in future to justify the making of special provisions in regard to them (*e.g.* clause 366). The notes on the relevant clauses will explain the reasons for these provisions.

4. It is necessary to draw attention in this context to two other recommendations of the Company Law Committee which have affected the structure of the Bill. In the Indian Companies (Amendment) Act, 1951 (LII of 1951), certain special powers were conferred on Courts of Law and the Central Government. While the powers conferred on the Courts by section 7 of that Act were based largely on the provisions of section 210 of the English Companies Act, 1948, the other powers conferred on the Central Government were of a quasi-administrative nature to be exercised on the recommendations of an Advisory Commission provided for under section 8 of the Amendment Act. The Company Law Committee recommended that if and when the Indian Companies Act was comprehensively revised on the lines of its recommendations, Government should consider the desirability of repealing sections 2, 3, 4, 5, 6, and 8 of the Amendment Act of 1951 containing these quasi-administrative powers. While it is not proposed to retain indefinitely these special powers, which the Central Government assumed in 1951, it is considered that it will not be expedient for the Central Government in the present circumstances of company management in this country, to divest itself of these powers till experience of the working of the new Act has shown that these special powers are no longer necessary. Clause 598 of the Bill, therefore, proposes the retention of these powers for a period of three years from the commencement of the new Act. The provisions of sections

2, 3, 4, 5, 6 and 8 of the Amendment Act of 1951, which have been incorporated in the present Indian Companies Act as sections 86J, 87AA, 87B [second proviso to clause (c)], 87BB, 87 CC and 239B, have therefore been relegated to a Schedule (Schedule XI) attached to this Bill. Section 7 of the Amendment Act, which it is proposed to incorporate permanently in the Companies Act, has been retained as clauses 367 to 377. The notes on these clauses explain these structural changes.

In regard to Table A in the present Act, the Company Law Committee recommended that having regard to the importance of the provisions contained in the compulsory regulations of this Table, it was desirable that they should be inserted as independent sections in the Act itself. The acceptance of this recommendation has involved the transfer to the body of the Bill of many of the provisions hitherto included in Table A. Further, in order to avoid unnecessary duplication, those regulations in Table A which merely draw attention to the relevant provisions of the Act have been omitted. In the result the new Table A has been considerably abridged. The notes on clauses relating to this Table explain these structural alterations.

5. Advantage has been taken of the opportunity offered for the consolidation of the Act for the first time since 1913 to re-arrange its different Parts in a more logical order. The general principle has been to arrange the different Parts of the Act in such a way that they follow, as far as possible, the chronological sequence in the formation, growth and decay of companies. Thus, for example, it has been felt that the provisions of the Act which relate to the formation of companies should precede those relating to their management. The re-arrangement of matter which has followed as a consequence of this decision has entailed considerable changes in the structure of the present Act. It is, however, felt that these changes will eventually result in a better understanding and appreciation of the scheme of the Indian Companies Act.

C. D. DESHMUKH,

NEW DELHI ;  
*The 22nd August, 1953.*

---

## NOTES ON CLAUSES

## PART I

*Clause 2*

*Sub-clause (1). "articles".* The articles of a company may be altered by the Court in pursuance of the power conferred on it by clause 374 of the Bill which corresponds to section 153C(6) of the existing Act. Reference has therefore been made to alteration in pursuance of this Act or of any previous companies law.

The other alterations made are purely consequential.

*Sub-clause (2). "associate of the managing agent."* This is largely based on the recommendations of the Company Law Committee (paragraph 28). As pointed out by the Committee, if the provisions of the Act regarding the managing agent are to be effectively enforced, they have to be extended to associates of the managing agent. Otherwise, they will be easily evaded. In paragraph (f), which defines the cases in which a body corporate will be an associate of a managing agent, the reference to "one-fourth or more of the total voting power" has been altered into "not less than one-half of the total voting power". It is not considered desirable to make a body corporate in which less than one-half of the voting power may be controlled by the managing agent, an associate of such agent.

*Sub-clause (4). "body corporate" or "corporate", and sub-clause(5) "book and paper" and "book or paper".* These definitions are based on those found in the English Act [section 455 (1) and (3).]—See page 231 of the Company Law Committee's Report.

*Sub-clause (6). "branch office".* See paragraph 28 of the Company Law Committee's Report. The definition suggested there has been recast so as to express the intention in clear terms.

*Sub-clause (7). "company".* The expressions "company", "existing company", "private company" and "public company" have all been defined in a separate clause, *viz.*, clause 3, as that course is more convenient from the drafting point of view. Attention has been drawn to those definitions in clause 3.

*Sub-clause (8). "the Court".* For the same reasons as have been given above it has been found convenient to define "the court having jurisdiction" in a separate clause and to draw attention to that definition in this clause.

*Sub-clause (9). "debentures".* The existing definition has been amplified on the lines of the definition found in the English Act, *viz.*, section 455(1). See paragraph 27 and also page 228 of the Company Law Committee's Report.

*Sub-clause (12). "document".* This is based on the definition found in section 455(1) of the English Act. See page 231 of the Company Law Committee's Report.

*Sub-clause (13). "existing company".* Please see the note on sub-clause (7).

*Sub-clause (14). "financial year".* This is based on the definition suggested at page 228 of the Company Law Committee's Report. See also paragraph 23 of the Report. The provision that the financial year should not exceed 15 months or in special cases 18 months has been embodied more appropriately in a substantive clause of the Bill, *viz.*, clause 195 which provides for the laying of the accounts of the company before the annual general meeting.

*Sub-clause (15). "holding company".* The expressions "holding company" and "subsidiary" have been defined in clause 4; and attention has been drawn to that definition in this clause.

*Sub-clause (16). "India".* See section 2(1) (7) of the existing Act.

*Sub-clause (17). "insurance company".* See section 2(1) (8) of the existing Act.

*Sub-clause (18) "issued generally".* See paragraph 28 of the Company Law Committee's Report. This is based on the definition found in the English Act—section 455(1). A drafting improvement has been effected in that definition, making it quite clear that an issue to existing members or debenture holders and others will also fall within the scope of the definition.

*Sub-clause (19) "manager".* The managing agent has been specifically excluded from the definition of "manager" as suggested by the Company Law Committee, *vide* paragraph 27 and page 299 of its Report. It has also been made clear that a manager must be an individual and not a firm or a body corporate.

*Sub-clause (20). "managing agent".* This is based on the definition suggested by the Company Law Committee. See para. 27 and page 229 of its Report. The words "except to the extent otherwise provided for in the agreement" which occur in the existing definition have been omitted.

*Sub-clause (22). "memorandum".* The definition has been brought into line with the definition of "articles" by referring to alterations made under the previous companies laws as well as this Bill.

*Sub-clause (23). "officer".* The existing definition has been expanded so as to cover the case where the managing agent is a firm or a body corporate. In such a case a partner in the firm or a director, managing agent or manager of the body corporate will be treated as an officer. Clauses 504, 500 and 506 correspond to sections 235, 236 and 237 of the existing Act and clauses 441 and 442 to sections 195 and 196 of the existing Act, while clauses 577 to 581 correspond to section 278 of the existing Act. The liabilities imposed by sections 195 and 196 on officers of the company and the privileges conferred by section 278 should, it is considered, extend also to the auditors of the company.

*Sub-clause (25). "paid-up capital".* The insertion of this definition simplifies the drafting of the Bill in various places.

*Sub-clause (27). "previous companies law".* The expression occurs in many places in the Bill, and has been comprehensively defined in clause 3(1)(ii) of the Bill.

*Sub-clause (30). "prospectus".* This is based on the definition found in the English Act [section 455(1)]. The words "but shall not include any trade advertisement which shows on the face of it that a formal prospectus has

been prepared and filed", which occur in the definition in the existing Indian Act have been omitted as suggested in paragraph 27 of the Company Law Committee's Report.

*Sub-clause (32). "Schedule" and sub-clause (33) "Scheduled Bank"*. These definitions have been added as they occur in many places in the Bill.

*Sub-clause (34). "share"*. This definition corresponds to section 2(1)(16) of the existing Act.

*Sub-clause (35). "subsidiary company" or "subsidiary"*. Please see the note on sub-clause (15).

*Sub-clause (36) "total voting power"*. This expression occurs in many places in the Bill; and a definition is therefore desirable.

*Sub-clause (37). "trading corporation"*. See section 2(1)(17) of the existing Act.

*Clause 3.*—This combines clauses (2), (7), (13) and (13A) of sub-section (1) of section 2 and section 2A of the existing Act. The Acts enumerated in clause 3(1)(ii) are previous companies laws. Proviso (i) to section 2A of the existing Act has become spent and has therefore been omitted.

*Clause 4.*—As suggested by the Company Law Committee (paragraph 27), the definitions are based on those found in section 154 of the English Act. The illustration has been added so as to bring out clearly the intention underlying sub-clause (1)(c). A few minor drafting improvements have also been effected.

*Clause 5.*—This is based on section 440(2) of the English Act. The language, however, has been amplified so as to cover all cases which are intended to be included. For instance, a person who is himself guilty of the default, failure etc., although he cannot be said to authorise or permit the default or failure is obviously intended to be within the scope of this provision.

*Clause 6.*—This is based on section 455(2) of the English Act, *vide* paragraph 30 of the Company Law Committee's Report.

*Clause 7.*—This is intended to make it clear that the provisions of this Bill will override the memorandum, articles, agreements executed by the company, and resolutions passed in general meeting by the company and resolutions passed by the directors of the company, unless it is expressly provided otherwise in the Bill itself. This clause will apply whether the memorandum or articles, agreements or resolutions, be before or after coming into operation of this Bill.

*Clause 8.*—This is based on the recommendation made by the Company Law Committee in paragraph 31 of its Report. In regard to winding up, the District Court may be invested with jurisdiction only in respect of companies whose paid-up share capital is one lakh of rupees or less. In respect of certain other specified matters chief among which are those relating to investigation, and remedial action where the company acts either oppressively, or prejudicially to the interests of the company, jurisdiction will vest exclusively in the High Court.



## PART II

*Clause 9.*—The corresponding section of the existing Act is section 4. It is inappropriate that companies should hereafter be formed either in pursuance of an Act of Parliament of the United Kingdom or of Royal Charter or Letters Patent. This explains the omissions made from sub-sections (1) and (2) of that section.

*Sub-clause (3)* makes a few drafting improvements in section 4(3) of the existing Act.

*Clause 10.*—See section 5 of the existing Act and section 1 of the English Act. No change of substance has been made.

*Clause 11* combines sections 6, 7 and 8 of the existing Act. Compare section 2 of the English Act.

*Clause 12.*—See section 9 of the existing Act and section 3 of the English Act.

*Clause 13.*—*Sub-clause (1)* corresponds to section 10 of the existing Act and section 4 of the English Act.

*Sub-clause (2)* brings out the intention quite clearly.

*Sub-clause (3).*—Compare the proviso to section 10 of the existing Act. It has been generalised so as to refer to everything which need not be included in the memorandum.

*Clause 14*—combines sections 12, 13 and 14 of the existing Act. Compare section 5 of the English Act.

*Clause 15.*—Compare section 15 of the existing Act. Sub-section (1) of that section has been split up into two sub-clauses in the Bill.

*Clause 16.*—The first paragraph of section 16 of the existing Act has been split up into two sub-clauses.

*Clauses 17 to 21.*—As the name of the company has to be mentioned in its memorandum, these provisions have been placed immediately after those relating to the memorandum.

*Clause 17.*—*Sub-clause (1)* is based on section 17 of the English Act. It generalises the specific prohibitions contained in section 11(3) of the existing Act.

*Sub-clause (2)* is based on the latter portion of section 11(1) of the existing Act.

*Clause 18* is based on section 11(4) of the existing Act and section 18(1) of the English Act.

*Clause 19.*—Compare section 11(2) of the existing Act and section 18(2) of the English Act.

*Clause 20.*—Compare section 18(3) and (4) of the English Act. It has been made clear that when the name is changed, the Registrar should himself make the necessary alteration in the memorandum of the company.

*Clause 21.*—Compare section 26 of the existing Act and section 19 of the English Act.

*Sub-clause (4)* is based on the Company Law Committee's recommendation in paragraph 38 of the Report.

*Sub-clause (6) (d)* is intended to give effect to the recommendation contained in paragraph 37 of the Company Law Committee's Report. The provision has been drafted in elastic terms.

In most other respects the clause is based on section 19 of the English Act with a few verbal changes here and there.

*Clause 22* corresponds to section 17(1) of the existing Act.

*Clause 23* corresponds to section 17(3) and (4) of the existing Act.

*Clause 24 Sub-clause (1)* gives effect to the Company Law Committee's recommendation in paragraph 34. All the regulations set out in section 17(2) of the existing Act (in addition to some others which, according to the Company Law Committee, should also be obligatory on all companies) have been embodied in the Bill. The latter portion of the first paragraph of section 17(2) and the two provisos have accordingly been omitted.

*Sub-clause (2)* corresponds to section 18 of the existing Act.

*Clause 25* corresponds to section 19 of the existing Act. Reference has been added to the occupation of the subscribers of the memorandum, in accordance with the Company Law Committee Report.

*Clause 26* except that sub-section (1) of section 20 has been split up into two sub-sections, no change has been made.

*Clause 27* corresponds to section 16 of the English Act and section 67 of the existing Act. The provisions have been generalised so that they may be applicable to all cases which may occur.

*Clauses 28, 29 and 30* correspond to sections 22, 23 and 24 of the existing Act. No change of substance has been made.

*Clause 31* corresponds to section 21 of the existing Act and section 20 of the English Act. The language has been generalised so as to make reference not only to the members of the company but also to the company.

*Clause 32* corresponds to section 27 of the existing Act and section 21 of the English Act. For the words "commencement of this Act" which refer to the commencement of the Act of 1913, the date on which that Act came into force, *viz.* the 1st day of April, 1914, has been substituted.

*Clause 33* corresponds to section 20A of the existing Act and section 22 of the English Act. In the proviso, the words "a particular alteration" have been substituted for the words "the alteration" so as to bring out the meaning clearly.

*Clause 34* corresponds to section 25 of the existing Act and section 24 of the English Act. Power has been conferred in general terms on any company to reduce any fee or charge etc. payable to it (clause 591). Hence the omission of the words "or such less sum as the company may prescribe" which occur in the existing Act.

In sub-clause (2) reference has been made to the officer of the company who is in default,—compare section 24(2) of the English Act.

*Clause 35* in sub-clause (1), reference has been made to certain resolutions and agreements which have also to be treated in the same way as articles of the company.

*Clauses 36 and 37* correspond to sections 25 and 27 of the English Act. *Clause 36* corresponds to section 30 of the Indian Act. Section 27 of the English Act has been incorporated in accordance with the Company Law Committee's recommendation in paragraph 40 of the Report.

*Clauses 38 and 39* correspond to section 154 of the Indian Act and sections 29 and 30 of the English Act. The best place for this provision however seems to be here. This is in accord with the arrangement in the English Act.

*Clause 40* corresponds to section 147 of the Indian Act and section 31 of the English Act. The best place for this clause seems to be here.

*Clauses 41 to 43* correspond to sections 88, 89 and 90 of the Indian Act and sections 32, 33 and 34 of the English Act.

*Clause 44* is based on the Company Law Committee's recommendation at page 296 of its Report.

*Clause 45* is based on section 91 of the existing Act and section 35 of the English Act.

*Clauses 46 to 48.*—These are based on sections 148 and 149 of the existing Act and regulations 112 to 115 of Table A in the first Schedule to that Act, which are all compulsory regulations. See section 17 (2) of the existing Act. They have therefore been incorporated in the body of the Bill as suggested by the Company Law Committee.

*Clause 49.*—Compare section 150 of the existing Act and section 36 of the English Act.

### PART III

It is considered desirable to put the provisions relating to prospectuses allotment of shares, and the issue of shares at a commission or discount etc. in a separate Part. The place assigned to these provisions in the Bill corresponds to the place which has been assigned to them in the English Act. The provisions relating to prospectuses and allotment are mostly based on the drafts suggested by the Company Law Committee at pages 375 to 389 of the Report. These in their turn are largely modelled on the provisions of the English Act (sections 37 to 52).

*Clause 50.*—See section 92 of the Company Law Committee's draft and section 36 of the English Act.

*Clause 51.*—See section 93 of the Company Law Committee's redraft and section 38 of the English Act. Section 39 of the English Act having been omitted by the Committee, the words "Subject to the provisions of the next following section" have had to be omitted from sub-clause (1) of clause 51. It is considered desirable to retain the provision contained in sub-section (5) (b) of section 38 of the English Act. Where the new shares or debentures are to be uniform in all respects with previous issues and they are also dealt in on a recognised stock exchange, there seems to be no reason for applying the provisions of the clause.

*Clause 52*.—See section 94 of the Company Law Committee's redraft and section 40 of the English Act. Only some verbal improvements have been sought to be effected.

*Clause 53*.—See section 95 of the Company Law Committee's redraft and section 41 of the English Act. A few drafting changes of no great consequence have been made.

*Clause 54*.—See section 96 of the Company Law Committee's redraft and section 42 of the English Act. It may be noted that the Company Law Committee's redraft makes the provisions applicable to all companies whether or not they have a share capital and the exemption contained in section 42(2) of the English Act in regard to private companies has also been omitted. Clause 54 in both respects follows the Company Law Committee's redraft.

*Clause 55*.—See section 97 of the Company Law Committee's redraft and section 43 of the English Act. Some minor drafting changes have been made.

*Clause 56*.—See section 98 of the Company Law Committee's redraft and section 44 of the English Act. No changes of substance have been made.

*Clause 57*.—See section 100 of the Company Law Committee's redraft and section 45 of the English Act.

*Clause 58*.—See section 101 of the Company Law Committee's redraft and section 46 of the English Act. Sub-clause (c) of the clause is a fresh addition made by the Company Law Committee which is not found in the English Act.

*Clause 59*.—This is based on section 101F of the Company Law Committee's redraft. There is no similar provision in the English Act.

*Clause 60*.—This is based on section 102 of the Company Law Committee's redraft. Here again there is no corresponding provision in the English Act.

*Clause 61*.—This corresponds to section 55 of the English Act. The insertion of this provision has been recommended by the Company Law Committee. See pages 298 and 299 of the Report. An endeavour has been made to simplify the drafting of the clause so as to bring out the meaning quite clearly.

*Clause 62*.—See section 99 of the Company Law Committee's redraft. Only a few drafting improvements have been effected. This clause corresponds to section 12 of the British Prevention of Fraud (Investment) Act, 1939 (2 and 3 Geo 6 Chapter 16).

*Clause 63*.—See section 101A of the Company Law Committee's redraft and section 47 of the English Act. Sub-section (8) of section 101A of the Company Law Committee's redraft has been embodied in a separate paragraph of sub-clause (4) of this clause.

*Clause 64*.—See section 101B of the Company Law Committee's redraft and section 48 of the English Act.

*Clause 65*.—See section 101C of the Company Law Committee's redraft and section 49 of the English Act.

*Clause 66.*—See section 101D of the Company Law Committee's redraft and section 50 of the English Act. The proviso to sub-clause (1) of the clause has been suggested by the Company Law Committee; it is not found in the English Act.

*Clause 67.*—See section 101E of the Company Law Committee's redraft and section 51 of the English Act. One change of substance has been made; it is laid down that permission to deal in the stock exchange should have been granted in respect of shares and debentures. The mere fact that the permission has *not* been refused will not be sufficient.

*Clause 68.*—Compare section 101D(6) of the Company Law Committee's redraft and section 50(6) of the English Act. As the provision is one which applies both to clause 66 and to clause 67 it is considered more appropriate to put it as an independent clause.

*Clause 69.*—Compare section 104 of the Indian Act and section 52 of the English Act. As recommended by the Company Law Committee (page 299 of the Report) a separate provision has been made for the case of bonus shares. In their case, no contract in writing need be filed with the Registrar.

*Clause 70.*—This corresponds to section 105 of the Indian Act and section 53 of the English Act. As suggested by the Company Law Committee (page 300 of the Report), it has been laid down that the rate of the commission should not exceed 10 per cent and a maximum penalty of 500 rupees has also been imposed.

*Clause 71.*—This corresponds to section 54A of the Indian Act and section 54 of the English Act. The changes suggested in paragraph 50 the Company Law Committee's report have been embodied in the redraft.

*Clause 72.*—This corresponds to section 56 of the English Act and its incorporation is based on the Company Law Committee's recommendation (page 300 of the Report).

*Clause 73.*—See section 105A of the existing Act and section 57 of the English Act. Only a few drafting changes have been made. The provision that the maximum rate of discount should not exceed 10 per cent is found in the Indian but not in the English Act. The Indian Act has been followed.

*Clause 74.*—See section 105B of the Indian Act and section 58 of the English Act. As suggested by the Company Law Committee (page 300 of the Report), the penal provisions have been extended to the whole section, and the provision in sub-section (3) of section 58 of the English Act has been embodied as sub-clause (3) of the clause.

*Clause 75.*—See the redraft of section 105 C suggested by the Company Law Committee at page 399 of the Report. No change of substance has been made. An endeavour has been made to bring out the intention as clearly as possible.

#### PART IV

*Clause 76* corresponds to section 28(1) of the Indian Act and section 73 of the English Act.

*Clause 77* corresponds to section 28(2) of the Indian Act and section 74 of the English Act. The proviso, which is found in the English section 48 M of Law,

has been incorporated. It is clearly unnecessary that fully paid-up shares which rank alike in all respects should have separate distinguishing numbers.

*Clause 78.*—Compare section 29 of the Indian Act and section 81 of the English Act. As “share” has been defined in clause 2 of the Bill as including stock, it is unnecessary to refer to stock in this clause.

*Clauses 79 to 83.*—are based on the recommendations of the Company Law Committee in paragraphs 47-49 of the Report. See also the summary of the recommendations at pages 241-244 of the Report.

*Clause 84.*—See recommendation (*viii*) at page 244 of the Report of the Company Law Committee.

*Clause 85.*—See section 49 of the Indian Act and section 59 of the English Act. The provision in clause (a) of those sections, which authorises the company to differentiate between the share holders in the amounts and times of payment of calls, has not been embodied in this clause, as it is considered that this power is open to abuse. It does not also seem to be necessary that when shares are issued at the same time, different provision should be made in regard to the amounts, or the times of payment, of calls on the shares.

*Clause 86.*—See section 50 of the Indian Act and section 61 of the English Act. Provision has been made in sub-clause (1)(a) for increasing the share capital by adding to the amount paid up on the existing shares, but it has been made clear that the addition should be made from the accumulated profits, reserves or capital moneys of the company and that no fresh liability should be imposed on the shares.

*Clause 87.*—Compare section 51 of the Indian Act and section 62 of the English Act.

*Clause 88.*—See section 52 of the Indian Act and section 63 of the English Act.

*Clause 89.*—See section 53 of the Indian Act and section 63(1) of the English Act. Those provisions imply the existence of the power referred to in this clause, in the company. It is considered desirable to bring out this intention clearly.

*Clause 90.*—See section 53 of the Indian Act and section 63 of the English Act. Only some drafting changes have been made.

*Clause 91.*—See section 68 of the Indian Act and section 64 of the English Act.

*Clause 92.*—See section 69 of the Indian Act and section 60 of the English Act.

*Clauses 93 to 97.*—These are based on sections 55-66 of the Indian Act and sections 66-71 of the English Act. The sections have been re-arranged on the lines of the English Act.

Section 67(3) of the English Act has been embodied as sub-clause (3) of clause 94, as recommended by the Company Law Committee at page 245 of the Report.

*Clause 98.*—Compare section 64 of the Indian Act and section 71 of the English Act. The word “knowingly” has been substituted for “wilfully” in sub-clauses (a) and (b).

*Clauses 99 and 100.*—See section 66A of the Indian Act and section 72 of the English Act. Regulation 4 of Table A of the Indian Act has been embodied in clause 99. The time-limit laid down in sub-section (2) of the Indian section has been extended to 21 days. See sub-clause (2) of clause 100. These changes are based on the recommendations of the Company Law Committee.

*Clauses 101 to 106.*—These are based on sections 34-37 of the Indian Act and sections 75-79 of the English Act.

*Clause 101.*—*Sub-clause (1)* is intended to make the relevant clause applicable to the case of a company having no share capital.

*Sub-clause (2)* makes the provisions inapplicable to non-trading companies.

*Clause 102.*—Compare section 34(3) of the Indian Act and section 75 of the English Act. The first proviso is based on the proviso to section 34(3) of the Indian Act and the second on the proviso to section 75 of the English Act.

*Clause 103.*—See section 34(6) of the Indian Act and section 76 of the English Act.

*Clause 104.*—See section 34(1) of the Indian Act.

*Sub-clause (3)* is based on section 34(2) of the Indian Act.

*Clause 105.*—This gives a right of appeal against refusal to recognize transfers on the lines suggested in paras. 42 and 43 of the Company Law Committee's Report. (See also the summary at pages 238 and 239 of the Report.) It has been made clear that there will be no right of appeal against refusal to recognize the transfer of a share of a private company which is not a subsidiary of a public company,—see sub-clause (3).

*Sub-clause (7)* provides for appeals being heard *in camera*.

*Clause 106.* incorporates the provisions of section 79 of the English Act, as suggested in paragraph 45 of the Company Law Committee's Report. Only a few drafting improvements have been effected.

*Clauses 108 and 109.*—These are based on sections 43-48 of the Indian Act and sections 83 and 112 of the English Act. The safeguards suggested by the Company Law Committee in paragraph 46 of the Report, *viz.* that the prior approval of the Central Government should be obtained for the issue of bearer share warrants and that the articles of the company should specifically authorise the issue of such warrants, have been embodied in the clauses.

*Clause 110.*—Please see section 84 of the English Act. Its incorporation is based on the Company Law Committee's recommendation in paragraph 237 of the Report. It is, however, considered that the best place for this provision is here rather than in the place suggested by the Company Law Committee. The maximum penalty provided is 3 years' imprisonment.

*Clause 111.*—This is based on the Company Law Committee's recommendation *vide* paragraph 227 of the Report,

*Clause 112.*—See section 125 of the Indian Act and section 87 of the English Act, and also the Company Law Committee's recommendation at page 303 of the Report. The provision for inspection of the register of debenture holders has been incorporated in a later clause of the Bill, *viz.* clause 156. Clause 112 has, therefore, been confined to the furnishing of a copy of the trust deed issued with respect to any debentures. Power has been given to compel the Court to order a copy of the trust deed to be supplied and the penalty has been confined to officers of the company in default.

*Clause 113.*—See section 88 of the English Act. Its incorporation in the Bill is based on paragraph 228 of the Company Law Committee's Report.

*Clause 114.*—See section 126 of the Indian Act and section 89 of the English Act.

*Clause 115.*—See section 127 of the Indian Act and section 90 of the English Act.

*Clause 116.*—See section 128 of the Indian Act and section 92 of the English Act.

*Clause 117.*—See section 129 of the Indian Act and section 94 of the English Act.

## PART V

This Part corresponds to Part III of the English Act. As in the English Act, it is considered desirable to put all the provisions relating to the registration of charges and the like in a separate Part.

*Clause 118.*—This is merely intended to simplify the drafting of the subsequent clauses in this Part.

*Clause 119.*—See section 109 of the Indian Act and section 95 of the English Act. The question of the amendment of the Indian Registration Act suggested in paragraph 226 of the Company Law Committee's Report will be taken up separately. The other alterations suggested to section 109 at page 302 of the Report have been embodied in this clause.

*Clause 120.*—See section 109(2) of the Indian Act.

*Clause 121.*—See section 109A of the Indian Act and section 97 of the English Act.

*Clause 122.*—See section 110 of the Indian Act and section 95(8) of the English Act.

*Clause 123.*—See section 111 of the Indian Act and section 95(9) of the English Act.

*Clause 124.*—See section 112 of the Indian Act and section 98 of the English Act.

*Clause 125.*—See section 113 of the Indian Act.

*Clause 126.*—See section 114 of the Indian Act and section 98(2) of the English Act.

*Clause 127.*—See section 115 of the Indian Act and section 99 of the English Act.



*Clause 128.*—See section 116 of the Indian Act and section 96 of the English Act.

*Clause 129.*—See section 116(3) of the Indian Act.

*Clause 130.*—See section 117 of the Indian Act and section 103 of the English Act.

*Clause 131.*—See section 118 of the Indian Act and section 102 of the English Act.

*Clauses 132 and 133.*—See section 121 of the Indian Act and section 100 of the English Act. Clause 133 gives power to the Registrar to make an entry of satisfaction or release, even though the company has not made a report to him in pursuance of clause 133. This is based on the provision contained in section 100 of the English Act.

*Clause 134.*—See section 120 of the Indian and section 101 of the English Act.

*Clause 135.*—See section 122 of the Indian and sections 96 and 99 of the English Act.

*Clause 136.*—See section 123 of the Indian and section 104 of the English Act.

*Clause 137.*—See section 124 of the Indian and section 105 of the English Act.

*Clause 138.*—This clause provides for the registration of charges created *before* the coming into operation of this Bill which require registration under its provisions but which did not require registration under the Indian Companies Act of 1913. In such a case, the date on which this Bill comes into operations is to be treated as the date on which the charge was created or on which the property subject to the charge was acquired.

## PART VI

*Clause 139.*—This corresponds to section 72 of the existing Act. As recommended by the Company Law Committee, provision has been made to the effect that except on the authority of a special resolution passed by the shareholders the registered office of the company should not be moved more than 10 miles from its location at the commencement of this Act, or in the case of a company which is established after the commencement of this Act, from the place where it is first situated. In sub-clause (3) provision has been made for the punishment not only of the company but also of officers of the company who act in contravention of the provisions of this clause. Compare section 107(3) of the English Act.

*Clause 140.*—Sections 73 and 74 of the existing Act have been combined on the lines of section 108 of the English Act. The drafting has been simplified and made clearer.

*Clause 141.*—Corresponds to section 75 of the existing Act. The provisions have been made applicable to business letters, bill-heads and letter paper. A few drafting alterations have also been made.

*Clause 142.*—This corresponds to section 103 of the Indian Act and section 109 of the English Act. Section 109(1) (c) of the English Act has been incorporated as suggested at page 299 of the Company Law Committee's Report. The addition will prevent companies from commencing business until it has been ascertained that no money is liable to be repaid to applicants for shares or debentures offered for public subscription by reason of failure to obtain permission for the shares or debentures to be dealt in on a stock exchange.

*Clauses 143 to 149.*—These correspond to sections 31, 31A, 33, 38, 39 and 40 of the Indian Act. The provisions about annual returns (section 32) have been embodied in a later clause, and those relating to transfer of shares (sections 34 and 35) have been embodied in earlier clauses.

The proviso to *sub-clause* (1) of clause 143 incorporates the provision contained in the proviso to section 110 (1) of the English Act. See the recommendations of the Company Law Committee at page 237 of its Report.

*Clause 144.*—This corresponds to section 31A of the existing Act.

*Clause 145.*—This provides for a register and an index being maintained in respect of debenture holders similar to the register and index in respect of members provided for in clauses 143 and 144, having regard to the importance of debentures as a means of financing the operations of companies at the present day.

*Clause 146.* corresponds to section 33 of the existing Act and section 117 of the English Act.

*Clause 147.*—This corresponds to section 37 of the Indian and section 115 of the English Act. Provision has been made for penalising the company and its officers who act in disregard of the provisions of this clause.

*Clause 148* corresponds to section 38 of the existing Act and section 116(1), (2) and (3) of the English Act. The provisions in the existing Act have been made clearer, in regard to the powers of the Court and also in regard to appeals. Compare sub-clauses (3) and (4) of the clause with sub-section (3) and the proviso to that sub-section in existing section 38.

*Clause 149* corresponds to section 39 of the Indian Act and section 116 (4) of the English Act.

*Clauses 150 and 151.*—These correspond to sections 41, 42 and 42A of the Indian Act and sections 119 and 120 of the English Act. As recommended in the Company Law Committee's Report (page 240) the sections have been made applicable to all foreign countries instead of being confined to the United Kingdom and Burma, as the existing Act does. The provisions have been extended to debenture holders also.

*Clause 152.*—This corresponds to sub-sections (1) and (2) of section 32 of the existing Indian Act and section 124 of the English Act. The detailed provisions contained in section 32 (2) of the existing Act have been taken over and incorporated in Schedule V. That Schedule as recommended by the Company Law Committee embodies all the provisions contained in the corresponding Schedule of the English Act *viz.* the Sixth Schedule. The annual return will cover the register of debenture holders also.

*Clause 153.* provides for an annual return being made by a company not having a share capital, on the lines of section 125 of the English Act. See the recommendation at page 238 of the Company Law Committee's Report.

*Clause 154.*—corresponds to sub-sections (3) and (4) of section 32 of the Indian Act and sections 126 and 127 of the English Act.

*Clause 155.*—corresponds to section 32 (5) of the Indian Act and sections 124(3), 125(3), 126(2) and 126(3) of the English Act. Sub-clause (2) corresponds to section 32 (5) of the Indian and sections 124(4), 125(4), 126(2), 126(4) and 127(3) (second para) of the English Act.

*Clause 156.*—corresponds to section 36 of the Indian Act. The provisions have been generalised so as to be applicable not only to the register of members but also to the register of debenture holders and annual returns including the documents etc. annexed to those returns.

*Clause 157.*—generalises the provision contained in section 40 of the existing Act.

*Clause 158.*—This corresponds to section 77 of the Indian Act and section 130 of the English Act. It is considered desirable to place the provision about the statutory meeting which will precede the first annual general meeting before the provision relating to the latter. The slight amendments suggested by the Company Law Committee in paragraph 72 of its Report in the new clause have been made.

*Clause 159.*—This corresponds to section 76 of the Indian and section 131 of the English Act. The Company Law Committee has revised the whole section so as to give effect to the suggestions contained in paragraph 73 of its Report.—see p. 347 of the Report. An attempt has been made to draft this clause in as clear and simple terms as possible. The expression “financial year” which occurs in this clause will have the meaning assigned to it by clause 195.

*Clause 160.*—This corresponds to section 78 of the Indian and section 132 of the English Act. The recommendation contained in paragraph 76 (see also page 248) of the Company Law Committee’s Report has been embodied in sub-clause (6) of the new clause.

*Clauses 161 to 178.*—These clauses embody the provisions contained in new sections 79 and 79A suggested by the Company Law Committee in paragraph 75 and at pages 348 to 352 of its Report, as well as the important provisions contained in Table A of the existing Act, in so far as they are applicable to meetings.

*Clause 161.*—This indicates the extent of the applicability of the subsequent clauses, *viz.* 162 to 178. They will apply in their entirety and notwithstanding anything to the contrary contained in the articles, to public companies and private companies which are subsidiaries of the public companies. So far as private companies which are not subsidiaries of public companies are concerned, they will apply only to the extent to which the articles of the company do not contain provisions to the contrary. In regard to meetings of any class of members of the company or debenture holders or any class of debenture holders, the provision relating to proxies (clause 167) will apply with such adaptations and modifications as may be found necessary. The other clauses with necessary adaptation, and modifications will apply unless the articles of the company or a contract binding on the persons concerned otherwise provides.

*Clause 162.*—See sub-clause (1) (a) of the redraft of section 79 at page 348 of the Company Law Committee’s Report.

*Clause 153.*—This embodies the provision in article 116 of the Table A of the existing Act. See also section 134(a) of the English Act. The provision that auditors should have notice of the general meeting sent to them is based on the Company Law Committee's recommendation. See redraft of section 145B, sub-section (4), at page 425 of the Company Law Committee's Report. Sub-clause (3) is based on the last portion of the redraft of section 79 (1) (b) at page 348 of the Company Law Committee's Report.

*Clause 164.*—This is based on section 79(1) (h) of the redraft suggested by the Company Law Committee and regulation 50 of Table A of the existing Act.

*Clause 165.*—See regulation 51 of Table A of the existing Act. The provision contained in this clause may be overridden by the articles.

*Clause 166.*—This is in accord with the existing procedure observed by the companies and should be regarded as a provision prefatory to the clauses 169 *et seq.*

*Clause 167.*—This is based on section 79A of the redraft suggested by the Company Law Committee at pages 351-2 of the Report and section 136 of the English Act. Sub-clause (5) is based on the first sentence of regulation 65 of existing Table A.

*Clauses 168 and 169.*—These are based on regulation 56 of existing Table A.

*Clause 170.*—This is based on section 79 (1) (c) of the redraft suggested by the Company Law Committee at pages 348 and 349 of its Report. See also section 137 of the English Act.

*Clause 171.*—This is based on regulation 59 of existing Table A. A maximum time limit for taking the poll has been laid down in sub-clause (2), *viz.* that it should be taken not later than 48 hours from the time when the demand for poll was made.

*Clause 172.*—This is based on the Company Law Committee's recommendation. See the note on clauses 79 to 83.

*Clause 173.*—This is based on clause (f) of new section 79(1) suggested by the Company Law Committee at page 349 and 350 of its Report.

*Clause 174.*—is consequential on clause 173, and makes it plain that a public company or a private company which is a subsidiary of a public company should not put any restriction on voting except the one specified in clause 173.

*Clause 175.*—Please see section 138 of the English Act and Company Law Committee's recommendation (iii) in paragraph 77 of the Report.

*Clause 176.*—This gives effect to sub-clause (d) of new section 79(1) of the Company Law Committee's redraft at page 349.

*Clause 177.*—See regulation 57 of existing Table A.

*Clause 178.*—See new section 79 (3) of the redraft suggested at page 350 of the Company Law Committee's Report and section 135 of the English Act.

*Clause 179.*—See section 80 of the existing and section 139 of the English Act. The provisions of the existing section have been amplified on the lines of the English section. See also the recommendations of the Company Law Committee at page 250 of its Report.

*Clause 180.*—This is based on section 140 of the English Act. See paragraph 76 of the Company Law Committee's Report which recommends the incorporation of this section.

*Clause 181.*—See section 81 of the Indian and section 141 of the English Act and paragraph 78 of the Company Law Committee's Report, and also pages 250 and 251 of the Report.

*Clause 182.*—This is based on section 142 of the English Act which is recommended for incorporation in paragraph 78 of the Company Law Committee's Report.

*Clause 183.*—This is based on section 144 of the English Act which is recommended for incorporation in paragraph 78 of the Company Law Committee's Report.

*Clause 184.*—See section 82 of the Indian and section 143 of the English Act. Sub-clause (4)(c) of this clause gives effect to the Company Law Committee's recommendation in paragraph 35 of the Report.

*Clause 185.*—See section 83 of the Indian and section 45 of the English Act. See also the redraft suggested by the Company Law Committee at pages 353 and 354 of the Report.

*Clause 186.*—See section 83(2) of the Indian and section 145(2) of the English Act.

*Clause 187.*—See section 83(3) of the Indian and section 145(3) of the English Act.

*Clause 188.*—See sub-sections (5), (6) and (7) of section 83 of the Indian Act and section 146 of the English Act.

*Clause 189.*—See paragraph 79 of the Company Law Committee's Report and recommendation (ii) at page 253 of that report.

*Clauses 190, 191 and 192.*—These are based on the Company Law Committee's recommendation under regulation 97 at page 341 of its Report.

*Clause 190* provides for the payment of the dividend only out of profits present or past. *Clause 191* prohibits the payment of dividend except to a registered shareholder or to his order or to his bankers. *Clause 192* provides for a penalty in the event of non-payment of the dividend within three months of the date of the declaration thereof.

*Clause 193.*—This corresponds to section 107 of the existing Act and section 65 of the English Act. The provisions contained in sub-section (7) of section 107 of the existing Act have been omitted as they have been provided for in the form of the balance sheet, in accordance with the Company Law Committee's recommendation at page 301 of its Report.

*Clause 194.*—This corresponds to section 130 of the existing Act and section 147 of the English Act. See also the redraft of section 130 suggested by the Company Law Committee at page 400 of its Report. It is considered sufficient if the accounts of the branch office are sent to the head office once in every three months instead of once in two months. The proviso to sub-clause (5) is based on the proviso to section 147 (4) of the English Act.

*Clause 195.*—This corresponds to section 131 of the existing Act and section 148 of the English Act. The first proviso to sub-clause (5) is based on the proviso of section 149 (3) of the English Act. Sub-clause (3) specifies

the period with reference to which the profit and loss account should be made up and sub-clause (4) defines this period as a "financial year" for the purposes of the Bill.

*Clause 196.*—See section 132 of the existing Act and section 149 of the English Act. See also the redraft of section 132 suggested at pages 401 and 402 of the Company Law Committee's Report.

*Sub-clause (3)* provides for the exemption of any company or class of companies from compliance with the requirements laid down in the Bill if in the opinion of the Central Government the grant of exemption is necessary in the national interest.

*Sub-clause (4)* is based on sub-section (5) of the redraft at page 401 of the Report.

*Sub-clause (5) (i) and (ii)* contains a special provision in regard to banking companies and insurance companies. Those companies, by reason of the non-disclosure of any matters which are exempted from disclosure by virtue of the Banking Companies Act or the Insurance Act, should not be regarded as not disclosing their true and fair view of the affairs.

*Sub-clause (5) (iii)* makes the same provision in the case of other companies which have been exempted from giving information either by virtue of Schedule VI of the Bill or by virtue of a notification or order issued under sub-clause (3) or sub-clause (4) of this clause.

*Clause 197.*—This is largely based on section 133 of the redraft suggested at pages 402 to 404 of the Company Law Committee's Report. Compare section 150 of the English Act.

*Sub-clauses (3), (4) and (5)* incorporate the provisions contained in paragraph 15 (4) and (5) of Schedule VIII of the English Companies Act with appropriate changes, necessitated by the fact that the Bill provides for the accounts of each subsidiary company being attached to the balance sheet of the holding company instead of providing as in the English Act for the submission of consolidated group accounts for the holding company and the subsidiaries together.

*Clause 198.*—This is based on sub-section (5) of the redraft at page 403 of the Company Law Committee's Report and section 153 of the English Act. The case where the financial years of the holding company and the subsidiary have to be modified so as to be brought into entire accord with each other and the case where they are to be brought only within six months of each other have been dealt with separately. In the former case the exercise of the Government's power will be discretionary whereas in the latter case it will be obligatory.

*Clause 199.*—This is based on sub-sections (6) and (7) of page 403 of the Company Law Committee's redraft.

*Clause 200.*—This is based on section 134 of the redraft of the Company Law Committee at pages 404 and 405 of the Report. See also section 155 of the English Act.

*Clause 201.*—This is based on section 156 (1) of the English Act which has been reproduced in section 134 (4) of the redraft at page 404 of the Company Law Committee's Report.

*Clause 202.*—See section 135 of the redraft at page 405 of the Company Law Committee's Report and section 157 of the English Act.

*Clause 203.*—See section 156 (3) of the English Act and sub-section (5) of section 134 of the Company Law Committee's redraft.

*Clause 204.*—See section 158 of the English Act and section 135A of the Company Law Committee's redraft.

*Clause 205.*—See section 135B of the Company Law Committee's redraft at pages 406 and 407 of the Company Law Committee's Report.

*Clause 206.*—This is based on the recommendation made in paragraph 159 of the Company Law Committee's Report.

*Clause 207.*—This is based on section 163 of the English Act.

*Clause 208.*—See section 136 of the existing Act and section 433 of the English Act. Having regard to the provisions contained in section 33 of the Banking companies Act, 1949 (X of 1949), it is unnecessary to retain the reference to banking companies in section 136.

*Clauses 209 to 218* are mostly based on the drafts of sections 144 to 145B suggested by the Company Law Committee at pages 421 to 425 of the Company Law Committee's Report. The corresponding sections of English Act are sections 159 to 162.

*Clause 209.*—Sub-clause (7) provides for the removal of the auditor before the expiry of his term by the company in general meeting, after obtaining the previous approval of the Central Government in that behalf. \*A provision is clearly necessary for the case where an existing auditor is unable to fulfil his duties for any reason or becomes obviously unsuitable for continuing in his appointment. The last paragraph of sub-clause (8) is based on the provision in the English Act—section 159(7), second paragraph.

*Clause 210.*—Sub-clause (4) makes a consequential reference to sub-clause (7) of the previous clause.

*Clause 211.*—Sub-clause (1)(b) is based on section 161(1)(b) of the English Act. Such a provision seems to be desirable, especially in case where reciprocal arrangements are proposed by foreign countries on the basis of the provision contained in this sub-clause.

*Clause 212.*—Sub-clause (4) is consequential on the provision taking power to exempt particular companies from making disclosure of specified portions of their accounts. In such cases, it is clear that the accounts should not be deemed to be untrue or unfair merely by reason of the withholding of the information which the company has been permitted to withhold.

*Clause 213.*—This is based on sub-section (3) of section 145B of the redraft at page 425 of its Company Law Committee's Report.

*Clause 214.*—See the second proviso to section 145A (1) of the Company Law Committee's redraft at page 423 of its Report.

*Clause 215.*—See section 145B (5) of the Company Law Committee's redraft, and section 162 (2) of the English Act.

*Clause 216.*—See sub-section (4) of section 145B of the Company Law Committee's redraft and section 162(3) of the English Act.

*Clause 217.*—This generalises the provision in sub-section (7) of section 145B of the Company Law Committee's redraft.

*Clause 218.*—This penalises non-compliance by the auditor of the provisions relating to him.

*Clause 219.*—This is based on section 137 of the existing Act. It is considered desirable to retain this provision in spite of the considerable amplifications of the provisions relating to investigation contained in clauses 220 *et seq* of the Bill.

*Clauses 220 to 235.*—These are, broadly speaking, based on the provisions contained in sections 164 to 175 of the English Act. The necessity for the changes has been fully explained in paragraphs 190 to 197 of the Company Law Committee's Report and a detailed summary of the changes suggested will be found at pages 304 to 308 of the Report.

*Clause 220.*—See section 138 of the existing Act and section 164 (1) of the English Act. *Sub-clause (c)* is based on section 138(iv) of the existing Act, and is consequential on the retention of section 137 of the existing Act.

*Clause 221.*—See section 139 of the existing Act and section 164(2) of the English Act.

*Clause 222.*—See section 165 of the English Act.

*Clause 223.*—See section 166 of the English Act. Having regard to the managing agency system which prevails in India, sub-clauses (b), (c) and (d) have been added to the provision which occurs in the English Act.

*Clause 224.*—See section 167 of the English Act which has been embodied here with consequential alterations due to the prevalence of the managing agency system in this country.

*Clause 225.*—This embodies section 168 of the English Act with some drafting changes.

*Clause 226.*—This corresponds to section 169(1) and (2) of the English Act with some consequential changes. The question whether prosecution proceedings should be instituted will be decided by the Central Government after taking legal advice.

*Clause 227.*—This corresponds to section 169(3) of the English Act with consequential changes.

*Clause 228.*—This corresponds to sub-sections (4) and (5) of section 169 of the English Act.

*Clause 229.*—This embodies section 170 of the English Act with a few drafting alterations.

*Clause 230.*—This corresponds to section 171 of the English Act.

*Clause 231.*—This corresponds to section 172 of the English Act.

*Clause 232.*—This corresponds to section 173 of the English Act.

*Clause 233.*—This provides for an investigation as to whether a particular person is or is not, or was or was not an associate of a managing agent.



*Clause 234.*—This corresponds to section 174 of the English Act. A few drafting alterations have been made.

*Clause 235.*—This corresponds to section 175 of the English Act.

(ii) *Directors etc.*

*Clause 236.*—This is based on the drafts of section 83A(1) suggested at page 355 of the Company Law Committee Report in pursuance of paragraph 82 of that Report. Sub-clause (3) contains a definition of a "Board of Directors".

*Clause 237.*—This is based on the draft of section 83A(2) at page 355 of the Company Law Committee's Report. It has been made clear that only an individual may be appointed as a director of the company and that neither bodies corporate nor associations or firms could be appointed as directors of companies.

*Clause 238.*—See section 83B(1) of the existing Act and sub-section (1)(i) of the redraft of that section at page 356 of the Report.

*Clause 239.*—is based on sub-section 2(ii) of the redraft at page 356 of the Company Law Committee's Report. Sub-clause (2) of the clause makes the position clear where there is no provision in the articles of the company as to how directors should be appointed in cases not falling under sub-clause (1).

*Clause 240.*—This is based on regulations 78, 79, 81 and 82 of Table A of the existing Act all of which are compulsory regulations by virtue of section 17(2) of the Act.

*Clause 241.*—clearly affirms the right of a person to be appointed as director, provided the requisite notice of the intention to stand, or propose him as a candidate is given. This clause will prevent provisions being inserted in the articles, placing restrictions other than those laid down in the Bill in the case of public companies or private companies which are subsidiary of public companies.

*Clause 242.*—This is based on regulation 83 in Table A of the existing Act.

*Clause 243.*—This is based on the recommendations of the Company Law Committee and the provisions of sub-section (2) (iii) of new section 83B at pages 356 and 357 of the Report. The Company Law Committee recommended that there should be a majority of not less than 80 percent before the persons who are connected with the managing agent in the manner specified in this clause are appointed directors in vacancies which are subject to retirement by annual rotation. It is considered that a special resolution, that is to say, a resolution passed by not less than three-fourths of the votes cast at a meeting will suffice in this case also. The Bill requires a special resolution in various places and there is no special reason to distinguish this case from those cases. The exceptions contained in the provisos to paragraphs (a) and (j) of sub-clause (1) are obviously necessary.

*Clause 244.*—This is based on regulation 85 of Table A of the existing Act and sub-section (2) (i) of section 83B as redrafted by the Company Law Committee (see page 356 of the Report). Comprehensive provision has been made for all the different cases which may arise.

*Clause 245.*—See paragraph 85 of Company Law Committee's Report and sub-section (3) of Section 83B of the redraft at page 357 of the Report and also section 183 of the English Act.

*Clause 240.*—This is based on the second sub-paragraph of paragraph 86 of the Company Law Committee's Report. See also recommendation (ii) at page 255 of that report.

*Clause 247.*—This is based on section 84 of the existing Act and section 181 of the English Act.

*Clause 248.*—See the recommendation of the Company Law Committee in paragraph 86 of its Report, and also section 182 of the English Act. The recommendation of the Company Law Committee that the qualifying shares should be held beneficially by a director may lead to difficulties in practice. Such a requirement is not imposed by the English Act. It is therefore considered desirable to omit that requirement. Where the requisite shares are held in the name of a person, it seems unnecessary to go behind that fact and enquire whether he holds the share solely and beneficially for himself. Sub-section (2) of the redraft of section 85 suggested at page 358 of the Company Law Committee Report has therefore been omitted.

*Clause 249.*—This is based on sub-section (3) of the redraft of section 85 at page 358 of the Report.

*Clause 250.* This is based on sub-section (4) of the Company Law Committee's redraft of section 85 mentioned above.

*Clause 251.*—See sub-section (5) of the Company Law Committee's redraft of section 85.

*Clause 252.*—This lays down initial disqualifications corresponding to the disqualifications which, under section 86 I of the existing Act, entail the vacation of office by a director. Sub-clause (2) takes power to remove any disqualification arising from conviction or from failure to pay calls. Sub-clause (4) corresponds to section 86 I(2) of the existing Act. It is considered necessary to confine the power of a company to add to the disqualifications imposed by the Bill to private companies which are not subsidiaries of public companies.

*Clause 253 to 257.*—These limit the number of directorships which may be held by a single individual to twenty. See paragraph 91 of the Company Law Committee's Report and the draft suggested by the Committee at page 359. That draft has been split up and amplified so as to make clear provision for all the cases which may arise.

*Clauses 258 to 260.*—These impose an age limit on directors, but subject to the right of the company to override it. See paragraph 90 of the Company Law Committee's Report and the summary of the recommendations at page 254 of the Report which impose a rigid and inflexible age limit. It is not however considered desirable to go beyond the provisions of the English Act (section 185) and impose an absolute disqualification on persons who have attained the age of 65. If a company, having been specifically made aware of the age of a director, chooses to appoint him or to declare that he should not retire in virtue of the age limit, it is considered that it is better to permit it to have its way. The provisions contained in these clauses are

otherwise closely modelled on the provisions of sections 185 and 186 of the English Act. As in those sections, it will be open to the company by its articles to impose a lower age limit than 65 if it so chooses.

*Clause 261.*—This is based on section 86 I of the existing Act. See paragraphs 92 and 93 of the Company Law Committee's Report and the summary at page 265. Power has been given to the company to remove the director by an ordinary resolution as in section 184 (1). The English Act Sub-clause (2) is a consequential provision, which seems to be clearly necessary. Sub-clause (3) corresponds to sub-section (2) of the existing section 86 I but confines the operation of the sub-section to private companies which are not subsidiaries of public companies. Compare clause 252(4) ante.

*Clause 262.*—Compare section 184 of the English Act, on which this clause is based, in pursuance of the recommendations contained in paragraph 111 of the Company Law Committee Report. As in the English section, a director whose removal is proposed will have an opportunity for making representations to the company and also to be heard orally at the general meeting before which the subject comes up for consideration.

*Clause 263.*—This is based on the recommendation made by the Company Law Committee's Report. See recommendation (i) in paragraph 109 of the Report.

*Clause 264.*—This is based on recommendation (iv) in paragraph 109 of the Company Law Committee's Report.

*Clause 265.*—This is based on recommendation (iv) in paragraph 109 of the Report. In sub-clause (a) of the clause the intention has been made clear, *viz.*, that members whose places may be vacant should also be taken into account for the purpose of calculating the quorum.

*Clause 266.*—This is based on the latter part of recommendation in paragraph 109 of the Company Law Committee's Report.

*Clauses 267 and 268.*—These are based on recommendation (iii) of paragraph 109 of the Company Law Committee's Report. Clause 267 is consequential on clause 268 and clearly gives effect to the intention.

*Clause 269.*—See section 86 of the existing Act. The case where the appointment of a director is terminated has also been included within the scope of the clause.

*Clause 270.*—This is based on paragraph 101 and the draft of section 86CC at page 361 of the Company Law Committee's Report. It lays down the principle that, subject to the specific exceptions mentioned, the directors of the company as its governing body are entitled to exercise all the powers of the company.

*Clause 271* is based on sub-section (2) of the draft of section 86CC at page 361 of the Company Law Committee's Report and the note to that sub-section.

*Clause 272* corresponds to section 86 H of the existing Act, and is based on paragraph 102 of the Company Law Committee's Report. The additional restrictions suggested in that paragraph have been added. The clause gives a reasonable measure of protection to lenders who have acted in ignorance of the fact that the restrictions imposed on the Company by the clause have not been observed. See regulation 70 of Table A of the English Act.

*Clause 273.*—See paragraph 106, and the redraft of Section 86D at page 362, of the Company Law Committee's Report. Clause (iv) of sub-section (1) of the redraft has been split up into two. Where the directors control the exercise of not less than 50 percent of the total voting power of a public company, the prohibition will apply automatically. In other cases, that is, where the directors control less than 50 percent of the total voting power, it will be open to the Government to declare that the directors have sufficient control over the company to make the application of the clause reasonable in the circumstances of the case.

*Clause 274.*—The mere fact that for the purpose of the balance sheet, a book debt is required to be treated as a loan or an advance should not make the provisions of clause 273 applicable, unless it is clear that the transaction represented by the book credit was, from the very inception in the nature of a loan or an advance.

*Clause 275.*—See section 86F of the existing Act and paragraph 108 of the Company Law Committee's Report. *Sub-Clause* (2) of the new clause makes the clause inapplicable where the transaction relates to goods or materials which are the subject of trading either by the company or by the director or other party concerned. In such cases, within the limit laid down *vis.*, that the value of the goods or materials involved should not exceed Rs. 1,000 in one calendar year, the clauses will not apply. Where the requisite consent is not accorded the contract will be voidable at the option of the directors.

*Clause 276.*—This is intended to give power to the directors to carry on the business of the company when there is a permanent or temporary vacancy in the office of the managing agent. This will remove all doubts as to the of capacity the directors to function in such cases.

*Clause 277.*—This is based on section 91A of the existing Indian, and section 199 of the English Act. See paragraphs 96 and 97 of the Company Law Committee's Report and also pages 292 and 293 of the Report.

*Clause 278.*—See section 91B of the existing Indian Act and paragraph 98 of the Company Law Committee's Report. Not only voting but also participation in the discussion is prohibited to directors who are concerned or interested.

*Clause 279.*—See section 91C of the existing Indian Act and paragraph (second sentence) of the Company Law Committee's Report. Provision has been made for the maintenance of a register as in section 91A (3) of existing Act.

*Clause 280.*—This implements the recommendation contained in the first sentence of paragraph 99 of the Company Law Committee's Report.

*Clause 281.*—See section 87 of the Indian and section 200 of the English Act. See also the recommendation in paragraph 112 of the Company Law Committee's Report.

*Clause 282.*—This provides for the inspection of the register of directors etc.

*Clause. 283.*—This is consequential and implements the provision of clause 281.

*Clause 284.*—This is consequential on sub-clause (2) of clause 281. It will enable any member of the public to obtain essential information about the directors etc. of companies.

*Clause 285.*—This is based on section 195 of the English Act, which has been recommended for incorporation in paragraph 100 of the Company Law Committee's Report.

*Clause 286.*—This is consequential on clause 285. See section 198 of the English Act.

*Clause 287.*—This is based on paragraph 87 of the Company Law Committee's Report. The maximum remuneration which may be paid to the managing director or director who is in the whole time employment of the company, by way of percentage on the profits of the company, has been fixed at 5 percent. See sub-clause (3).

*Clause 288.*—Compare section 86B (1) of the existing Act, and the recommendation in paragraph 95 of the redraft of section 86B at page 360 of the Company Law Committee's Report. Assignment of office by a director has been prohibited absolutely.

*Clause 289.*—See section 86B, provisos and Explanation, of the existing Act and the provisos to section 86B of the redraft at page 360 of the Company Law Committee's Report. The provisions have been recast in positive terms. The power of appointment of alternate directors vested in directors may not strictly speaking, be said to constitute an assignment of the office of director.

*Clause 290.*—See section 86E of the existing Act and paragraph 107, and pages 260 and 261 of the Company Law Committee's Report.

*Clause 291 to 296.*—These are intended to give effect to the recommendations contained in paragraph 146 of the Company Law Committee's Report and the redraft of section 87J at pages 373 and 374 of the Company Law Committee's Report.

*Clause 291.*—See sub-section (5) of the redraft of section 875 at page 373 of the Report. The clause gives effect to the exception contained in that sub-section (5).

*Clause 292.*—This gives effect to recommendation (ii) in paragraph 146 of the Company Law Committee's Report.

*Clause 293.*—This gives effect to recommendation (iii) in paragraph 146 of the Company Law Committee's Report.

*Clause 294.*—This gives effect to recommendation (i) in the same paragraph.

*Clause 295.*—This gives effect to the recommendation embodied in sub-clause (c) of new section 87J(1) at page 373 of the Company Law Committee's Report. Power has been given to the Central Government to remove the disqualification. The power is intended to be exercised where it will be unjust to apply the prohibition contained in sub-clause (1) of the clause, for instance, by reason of the lapse of a number of years after the adjudication in insolvency or conviction of a criminal offence.

*Clause 296.*—This gives effect to recommendation (iv) in paragraph 146 of the Company Law Committee's Report. See also sub-clauses (3) and (4) at page 374 of the redraft.

*Clause 297.*—This is based on section 187 of the English Act. It has been made clear already that an undischarged insolvent cannot become director; but he may discharge the functions of a director without being

termed as such. This clause is intended to prohibit this and also to prevent an undischarged insolvent from being appointed as managing director or manager of the company.

*Clause 298.*—This is based on section 188 of the English Act. See paragraph 94 of the Company Law Committee's Report.

*Clause 299.*—See paragraph 88 of the Company Law Committee's Report<sup>t</sup> and compare section 189 of the English Act. It has been made clear that the intention underlying this clause is that the actual amount paid should be made known to the shareholders and other persons concerned.

*Clause 300.*—This is based on section 191 of the English Act. See paragraph 89 of the Company Law Committee's Report.

*Clause 301.*—This is based on section 192 of the English Act—*vide* paragraph 89 mentioned above.

*Clause 302.*—This is based on section 193 of the English Act—*vide* paragraph 89 mentioned above.

*Clause 303.*—This is consequential on clauses 300, 301<sup>1</sup> and 302, and is based on section 194 of the English Act.

*Clause 304.*—See section 86C of the existing Indian and section 205 of the English Act. The recommendations of the Company Law Committee's Report at page 258 of the Report have been incorporated.

*Clause 305.*—See section 70 of the existing Indian and section 202 of the English Act. A reference has been made to the managing agent also, in the clause.

*Clause 306.*—See section 71 of the existing Indian and section 203 of the English Act. The proviso at the end of clause 306 is clearly necessary. Obviously no one can be saddled with unlimited liability against his will.

### (iii) *Managing Agents.*

*Clause 307.*—This is based on recommendation in paragraph 116 of the Company Law Committee's Report. See also item (iv) at page 270 of the Report.

*Clause 308.*—This is prefatory to clauses 309 to 314. It indicates the<sup>e</sup> extent of application of those clauses.

*Clause 309.*—This is based on paragraph 117 of the Company Law Committee's Report. See also recommendations (i) and (ii) at page 267 of the Company Law Committee's Report. The proviso gives power to the Central Government to relax the requirements of sub-clause (i) in suitable cases, that is, wherever it may be really necessary to do so.

*Clause 310.*—This makes it clear that it is the company which should exercise the power of appointing or reappointing a managing agent and that the terms of agreement should not be varied except on the authority of a special resolution of the company. See paragraph 119 of the Report and items (i) and (iv) under clause (f) at page 277 of the Report.

*Clause 311.*—This is based on paragraph 118 of the Company Law Committee's Report, and item (iii) on page 270.

*Clauses 312, 313 and 314.*—These are based on the recommendations of the Company Law Committee's Report in paragraph 133 and the second sub-paragraph of para. 118.

*Clauses 315 to 20.*—These are intended, broadly speaking, to give effect to the recommendation's in paragraphs 119 to 122 of the Company Law Committee's Report. These have been summarised at pages 271 to 277 of the Report.

*Clause 315.*—This provides for the vacation of office by the managing agent where he is adjudicated insolvent or on the dissolution of the managing agency firm or winding up of the managing agency corporation.

*Clause 316.*—This provides for the suspension of the managing agent from office when a receiver is appointed for his property either by the Court or by his creditors in pursuance of any powers conferred on them by an instrument. Power has been given to the Court which appoints a receiver or which will have jurisdiction to wind up the company, to continue the managing agent in office and to cancel or vary any such order from time to time.

*Clause 317.*—This is based on recommendation (i) in paragraph 119 of the Company Law Committee's Report.

*Clause 318.*—See recommendation (ii) in paragraph 119 mentioned above. It has been made clear that any fraud or breach of trust of which a managing agent has been convicted outside India may also be taken into account by the company. The proviso prohibits the company which has appointed a managing agent with clear knowledge of his previous conviction from removing him afterwards on that ground.

*Clause 319.*—See recommendation (iii) in paragraph 119 mentioned above.

*Clause 320.*—This is based on the last position of recommendation (i) of paragraph 119 of the Company Law Committee's Report. The managing agent has been given the same rights as a director in the matter of making written and oral representations in respect of resolutions providing for his removal.

*Clause 321.*—This is based on the second paragraph of recommendation (i) mentioned above. Provision has also been made for a case where there is a further appeal or revise petition against the sentence.

*Clause 322.*—This is based on the latter portion of the first sub-paragraph of recommendation (i) of paragraph 119 mentioned above.

*Clause 323.*—This is based on paragraph 121 of the Company Law Committee's Report.

*Clause 324.*—This is based on clause (c) of section 87B of the existing Act.

*Clause 325.*—This is based on paragraph 122 of the Company Law Committee's Report. Where there is a change in the constitution of the managing agency firm to the extent of one half of the total interest, a provision like this is clearly desirable.

*Clause 326.*—This makes the principle of the previous clause applicable where there are changes in the constitution of a body corporate acting as a managing agent.

*Clause 327.*—Where a change in the constitution of a managing agency firm or corporation has been approved by the company it is only where further changes substantially alter the position as it obtains on the date of approval of the original change by the company which should attract operation of clauses 325 and 326.

*Clause 328.*—provides for the application of Schedule VIII to managing agents. That Schedule implements the recommendations (i), (ii) and (iii) in paragraph 122 of the Company Law Committee's Report.

*Clauses 329 to 345.*—deal with the subject of the remuneration payable to managing agents and are intended to carry out the recommendations contained in paragraphs 125 to 133 of the Company Law Committee's Report.

*Clause 329.*—See the recommendation in paragraph 126 of the Company Law Committee's Report and also sub-section (i) of the redraft of section 87C at page 364 of the Report.

*Clause 330.*—Please see paragraph 130 and sub-section (2) of the redraft of section 87C at pages 364 and 365 of the Report.

*Clause 331.*—See the last paragraph of sub-section (2) of the redraft of section 87C (page 365 of the Report).

*Clause 322.*—Is based on the last sub-paragraph of paragraph 130 at page 99 of the Company Law Committee's Report.

*Clause 333.*—This embodies the principle in sub-section (1) of the redraft of section 87C at page 364 of the Company Law Committee's Report.

*Clause 334.*—This embodies the principle set out in the proviso to new sub-section (1) of section 87C. See also paragraph 127 of the Report.

*Clause 335.*—See sub-section (3) of new section 87C at page 365.

*Clause 336.*—See paragraph 128 of the Company Law Committee's Report.

*Clause 337.*—See the saving in sub-section (5) of new section 87C at page 365 of the Report.

*Clauses 338 to 344.*—These are intended to give effect to the recommendations in paragraphs 141 to 145, and pages 282 to 285, of the Company Law Committee's Report.

*Clause 338.*—This deals with the case where a managing agent or an associate of a managing agent is appointed selling agent of goods produced by the company. He will not be entitled to any additional remuneration for doing work as such selling agent except in the cases specified in sub-clause (2). The period of one month referred to in recommendation (iii) of paragraph 142 may be extended to three months in special circumstances set out in the resolution passed by the company.

*Clause 339.*—This makes the provisions of clause 338 applicable, where the business of the company consists of the supply or rendering of any services.

*Clause 340.*—This provides for a managing agent or an associate of the managing agent receiving commission in special circumstances where he is



appointed a buying agent of the company. The Company Law Committee has recommended that no commission need be paid for purchases made by a managing agent on behalf of a company, but it is well known that in cases where a managing agent managing several companies makes bulk purchases for fulfilling the needs of all the companies considerable economies result; and it is clearly desirable that in such cases the managing agent should be entitled at least to the outlay which he has had to incur. The clause therefore provides for the vesting of a discretion in the company to allow reimbursement or a commission in cases where purchases are made by the managing agent outside the State in which the goods purchased are to be used, provided the managing agent or associate maintains an office at that place for his own business.

*Clause 341.*—This gives effect to the recommendation in paragraph 143 of the Company Law Committee's Report.

*Clause 342.*—This relates to contracts between the managing agent or associate and the company for the sale or purchase of property or for underwriting shares or debentures etc. See paragraph 144 of the Company Law Committee's Report.

*Clause 343.*—This gives effect to the last sentence of the recommendation of the Company Law Committee's Report in paragraph 145 and provides for the termination of existing contracts which are contrary to the provisions contained in clauses 338 to 342 not later than 5 years from the date of publication of the Report which was in March, 1952.

*Clause 344.*—This is a consequential provision.

*Clause 345.*—This provides that remuneration received by managing agents otherwise than in conformity with the provisions of the Bill should be held by them in trust for the company. See the recommendation in the second sentence of paragraph 145 of the Company Law Committee's Report.

*Clause 346.*—This provides that a company will not be bound by any assignment of, or the creation of any charge on, the managing agent's remuneration; but the rights *inter se* of the managing agent and persons other than the company will not be affected.

*Clauses 347 to 349.*—These are intended to give effect to the recommendation in paragraph 124 and page 217 of the Company Law Committee's Report. See in this connection the redraft suggested by the Company Law Committee at page 363 of section 87B(e).

*Clause 350.*—This in general gives effect to the recommendation of the Company Law Committee in para 121 and pages 272 and 273 of its Report.

*Clause 351.*—This lays down the general principle that a managing agent is subject to the control and direction of the directors. See paragraph 134, and the redraft of section 87CC at page 366, of the Company Law Committee's Report. In the case of the specific powers referred in Schedule VII, the managing agent will be entitled to exercise them, unless the directors specifically impose any restriction on their exercise.

*Clause 352.*—Please see the redraft of section 87D at page 369 and paragraphs 136 and 137 of the Company Law Committee's Report. See also clause 273 (1) (d) and (e).

*Clause 353.*—This gives effect to the principle contained in section 87E of the existing Act as modified by paragraph 138 of the Report. See also the redraft of section 87E at page 370 of the Report.

*Clause 354.*—This is consequential on clauses 352 and 353, and is intended to implement the provisions contained in those clauses.

*Clause 355.*—See section 87F of the existing Act and paragraph 139 and pages 287 and 288 of the Company Law Committee's Report.

*Clause 356.*—This is intended to give effect to recommendation (c) at page 288 of the Report. Although the Report was published on the 11th March 1952 it is considered desirable to give effect to the provision from the 1st April 1952 which seems to be the more convenient date.

*Clause 357.*—See section 87H of the existing Act and paragraph 140, page 289, and the redraft at page 371, of the Company Law Committee's Report.

*Clause 358.*—This gives effect to the recommendation in the penultimate sentence of paragraph 124 at page 94 of the Company Law Committee's Report.

*Clause 359.*—This gives effect to the recommendation in paragraph 84 of the Company Law Committee's Report which limits the number of directors who may be appointed by the managing agent to one-third of the strength sanctioned by the articles. It has been made clear that the managing agent may remove any director appointed by him and replace him by someone else. Provision has also been made for the manner of application of the clause to cases where at the time of coming into operation of this Bill, more than one-third of the directors have been appointed by the managing agent.

*Clause 360.*—See section 152 of the existing Act.

*Clause 361.*—This embodies the provision in sub-section (6) of section 153 of the existing Act which applies both to clause 362 (which corresponds to section 153 of the existing Act and section 206 of the English Act) and to clause 363 which corresponds to section 207 of the English Act and the incorporation of which has been suggested in paragraph 229 of the Report.

*Clause 362.* corresponds to section 153 of the existing Act. The slight amendment, *viz.*, that the words "and voting" might be added, which has been suggested by the Company Law Committee at 309 of its Report has been embodied.

*Clause 363.*—Section 207 of the English Act has been embodied as suggested in paragraph 229 of the Report. The amendment suggested at page 309 of the Company Law Committee's Report has been embodied in sub-clause (1) (a).

*Clause 364.* corresponds to section 153A of the existing Act and section 208 of the English Act. The principle underlying the amendment suggested in paragraph 230, and at page 310 of the Company Law Committee's Report has been incorporated.

*Clause 365.* corresponds to section 153B of the existing Act and section 209 of the English Act.

*Clause 366.*—This is a new provision and it is intended to provide, at the instance of the Government, for the amalgamation of two or more companies in the national interest. Occasionally, cases arise where such an amalgamation in the national interest is clearly a necessity. The observance of the usual procedure prescribed by the existing Act in such cases will lead to prolonged delays which will be detrimental to the national interest. It has been made clear that any order made by the Government should provide for the old share holders, and the old debenture holders and other creditors, having the same interest in the company resulting from the amalgamation as they had in the original companies. Any order made by the Government under this clause will be laid on the table of both Houses of Parliament and will therefore be subject to the Parliamentary scrutiny.

*Clauses 367 to 377.*—These are intended to reproduce with some changes the provisions of sections 153C and 153D of the existing Act which were added by Act LII of 1951. See paragraphs 198-202, and the redrafts of sections 153C and 153D at pages 426-430, of the Company Law Committee's Report.

*Clause 367.*—This deals with the case of oppression of any member or members of the company. Compare section 210 of the English Act and clause (b) of section 153 C(1) of the existing Act.

*Clause 368.*—This deals with the case where the management is conducted prejudicially to the interests of the company. See clause (a) of section 153C(1) of the existing Act.

*Clause 369.*—This reproduces the effect of sub-section (3) of existing section 153C. Sub-clause (2) reproduces the last portion of section 153C(7) of the redraft at page 427 of the Company Law Committee's Report. Sub-clause (4) provides for the Government conferring on any member or members although the interest held by such member or members is not sufficient to bring them within the scope of sub-clause (1) (a) the right to apply under clause 367 or 368.

*Clause 370.*—This provides for notice being given to Government of every application under clause 367 or 368.

*Clause 371.*—This reserves the right conferred on Government by sub-section (2) of existing section 153C to make an application itself. The right is however confined to cases falling under clause 227 of the Bill. Compare section 210(1) of the English Act. It is not considered desirable that the Government should have the right to apply in cases not falling within the scope of clause 227, having regard especially to clause 369 (4) which gives power to the Government to authorise any member or members to make an application under clause 367 or 368.

*Clause 372.*—See sub-section (5) of existing section 153C. Clauses (e) and (f) of existing sub-section (5) are much too general and comprehensive and it does not seem to be necessary to confer those powers specifically on the Court.

*Clause 373.*—This is a new provision, and it gives power to the Court to pass an interim order.

*Clause 374.*—See sub-section (6) of existing section 153C.

*Clause 375.*—This deals with a minor matter of procedure, and corresponds to sub-section (9) of existing section 153C.

*Clause 376.*—This is based on sub-section (10) of section 153.

*Clause 377.*—This corresponds to section 153D of the existing Act. The disability imposed on the associate of a managing agent by this clause will extend both to a person who is an associate on the date of the making of the order and to a person who is an associate at any subsequent time during the disqualifying period.

*Clause 378.*—See section 91D of the existing Act and the recommendation of the Company Law Committee at page 295 of its Report. It is considered impracticable to require that the next meeting of the directors should be held within a period of not more than one month from the date of the contract. Copies of the contract are required to be sent to the directors and it is regarded that in view of this provision, it would be sufficient if the subject is considered in the ordinary Course at the next meeting of the directors. By virtue of clause 263, meetings of the directors have to be held at has once in every two months.

*Clause 379.*—See section 108 of the existing Act and section 80 of the English Act.

*Clause 380* corresponds to section 146 of the existing Indian Act.

*Clauses 381 to 384* correspond to section 282D of the existing Act. The best place for those clauses seems to be in this Part which deals with the Management and Administration of Companies.

*Clauses 385 to 388* correspond to sections 119 and 120 of the existing Act. The provisions applicable to receivers appointed in pursuance of an instrument have been extended to receivers appointed by a Court and also to managers appointed in pursuance of an instrument. There will be little difference in practice between their cases and that of a receiver appointed in pursuance of an instrument. The English Act refers both to receivers and managers. See Part VI of the English Act, and especially clause 369.

## PART VII

*Clause 389.*—See section 155 of the existing Act and section 211 of the English Act.

*Clause 390.*—See section 156 of the existing Act and section 212 of the English Act.

*Clause 391.*—See section 157 of the existing Act and section 214 of the English Act. The words “by the liquidator” have been omitted as suggested in paragraph 206 of the Company Law Committee's Report.

*Clause 392.*—See section 158 of the existing Act and section 213 of the English Act.

*Clause 393.*—See section 159 of the existing Act and section 214 of the English Act.

*Clause 394.*—See section 160 of the existing Act and section 215 of the English Act. Sub-section (3) of the existing Act has been recast as the surviving coparceners will not exhaust the category of legal representatives of a deceased who has left separate property in addition to coparcenary property.

*Clause 395.*—See section 161 of the existing Act and section 216 of the English Act.

*Clause 396.*—See section 162 of the existing Act and section 222 of the English Act.

*Clause 397.*—See section 163 of the existing Act and section 223 of the English Act.

*Clauses 398 to 401.*—These are intended to give effect to the recommendations in paragraph 207 of the Company Law Committee's Report. Compare sections 218, 219 and 220 of the English Act. The effect of these clauses will be as follows :

- (1) The High Court will have jurisdiction to transfer any case to a District Court.
- (2) Proceedings instituted in a District Court in pursuance of the jurisdiction conferred upon it by virtue of clause 9 of the Bill may be transferred by the High Court either to its own file or [to the file of some other District Court.
- (3) The High Court may direct that proceedings may continue in any District Court although that District Court might not have had jurisdiction to receive the petition in the first instance.
- (4) Orders may be passed by the High Court at any time or at any stage and whether an application in regard to the matters has been presented by a party or not.

*Clause 402.*—This corresponds to section 166 of the existing Act. Compare section 224 of the English Act. The alterations suggested in paragraph 208 and 209 of the Company Law Committee's Report (see also pages 314 and 315) have been embodied in the clause.

*Clause 403.*—This corresponds to section 224(2) of the English Act. See recommendation (b) under section 166 at stage 314 of the Company Law Committee's Report.

*Clause 404.*—This corresponds to section 168 of the Indian Act and section 229 of the English Act. The amplified provisions of the latter section have been embodied in this clause, as suggested in paragraph 210 of the Company Law Committee's Report.

*Clause 405.*—This corresponds to section 169 of the existing Act and section 226 of the English Act.

*Clause 406.*—See section 170 (1) and (2) of the existing Act and section 225 of the English Act. As suggested by the Company Law Committee (see paragraph 211 and pages 315 and 316 of the Company Law Committee's Report Section 225 (2) and (3) of the English Act has been embodied in this clause.

*Clause 407.*—See section 170 (3) of the existing Indian Act.

*Clause 408.*—See section 172 of the existing Act and section 230 of the English Act.

*Clause 409.*—See section 171 of the existing Act and section 231 of the English Act.

*Clause 410.*—See section 232 of the English Act and section 167 of the existing Act.

*Clause 411.*—This gives effect to the recommendation of the Company Law Committee that there should be an Official Liquidator attached to each High Court. See paragraph 213 and page 316 of the Company Law Committee's Report. In the High Courts of the smaller States, there may

not be enough work of a full-time. Official Liquidator and power has therefore been taken to appoint part-time liquidators. Having regard to the fact that District Courts may be vested with jurisdiction to wind up companies with a capital of less than one lakh of rupees, provision has been made for an Official Liquidator in the case of District Courts also. The official receiver appointed for insolvency purposes in District Court will also function as Official Liquidator under this Bill.

*Clause 412.*—This provides for the Official Liquidator acting as the liquidator in default of, or during any period of vacancies in the office of, a liquidator appointed by the Court.

*Clause 413.*—See section 175 (2) of the Indian and section 238 of the English Act.

*Clause 414.*—See section 240 of the English Act.

*Clause 415.*—is based on section 242 of the English Act. See also sections 175 and 176 of the existing Indian Act.

*Clause 416.*—See section 177 of the existing and section 239 (f) of the English Act.

*Clause 417.*—See section 175(6) of the English Act.

*Clause 418.*—See section 177A of the existing Indian and section 235 of the English Act.

*Clause 419.*—See section 177B of the existing Indian and section 236 of the English Act.

*Clause 420.*—See section 178 of the existing Indian Act and section 243 of the English Act.

*Clause 421.*—See section 179 of the existing Indian Act and section 245 of the English Act. The frame-work of the Indian section has been re-English tained.

*Clause 422.*—See section 180 of the existing Indian and section 245 of the English Act.

*Clause 423.*—See section 181 of the existing Indian Act.

*Clause 424.*—See section 183 of the existing Act and section 246 of the English Act.

*Clause 425.*—See section 182 (1), (2) and (3) of the existing Act and section 247 of the English Act.

*Clause 426.*—See section 182(4) of the existing Act and section 249 of the English Act.

*Clause 427.*—See section 252 of the English Act and sub-sections (1), (2) and (3) of section 178A of the existing Indian Act. The amendment suggested at page 317 of the Report under section 178A has been incorporated in this clause.

*Clause 428.*—See sub-sections (4) to (12) of section 178A of the existing Act and section 253 of the English Act.

*Clause 429.*—See section 173 of the existing Indian and section 256 of the English Act. The English section has been adopted in view of the Company Law Committee's recommendation at page 316 of the Report.

*Clause 430.*—See section 184 of the existing Indian and section 257 of the English Act. As recommended by the Company Law Committee at page 317 of the Report, the proviso to section 257(1) of the English Act has been embodied in this clause.

*Clause 431.*—See section 185 of the existing Indian and section 253 of the English Act.

*Clause 432.*—See section 186 of the existing Indian and section 259 of the English Act.

*Clause 433.*—See section 187 of the existing Indian and section 260 of the English Act.

*Clause 434.*—This is a new clause and is based on the recommendation of the Company Law Committee *vide* (b) (i) under sections 164 and 165 at page 314 of the Report.

*Clause 435.*—See section 188 of the existing Indian and section 261 of the English Act.

*Clause 436.*—This embodies the provision contained in section 261 (2) of the English Act.

*Clause 437.*—See section 190 of the existing Indian and section 262 of the English Act.

*Clause 438.*—See section 191 of the existing Indian and section 264 of the English Act.

*Clause 439.*—See section 192 of the existing Indian and section 439 of the English Act.

*Clause 440.*—See section 193 of the existing Indian and section 267 of the English Act.

*Clause 441.*—See section 195 of the existing Indian and section 268 of the English Act. As recommended by the Company Law Committee (page 318 of the Report), sub-section (1) of the English section has been adopted instead of section (1) of the Indian sub-section. It may be mentioned here that an auditor will be an officer of the company within the meaning of this section by virtue of the new definition of "officer" in clause 2 of this Bill.

*Clause 442.*—See section 196 of the existing Indian and section 270 of the English Act.

*Clause 443.*—See section 197 of the existing Indian and section 271 of the English Act.

*Clause 444.*—See section 198 of the existing Indian and section 272 of the English Act.

*Clause 445.*—See section 194 of the existing Indian and section 274 of the English Act. Sub-section (2) of the English section has been incorporated in this clause as suggested by the Company Law Committee at page 317 of the Report.

*Clause 446.*—See section 199 of the existing Indian and section 449 of the English Act.

*Clause 447.*—See section 200 of the existing Indian and section 276 of the English Act.

*Clause 448.*—See section 201 of the existing Indian and section 276(3) of the English Act.

*Clause 449.*—See section 202 of the existing Indian and section 277 of the English Act. The reference to “rehearing” has been omitted as suggested by the Company Law Committee at page 316 of the Report.

*Clause 450.*—See section 203 of the existing Indian and section 278 of the English Act.

*Clause 451.*—See section 206 of the existing Indian and section 279 of the English Act.

*Clause 452.*—See section 204 of the existing Indian and section 280 of the English Act.

*Clause 453.*—See section 205 of the existing Indian and section 281 of the English Act.

*Clause 454.*—See section 207 of the existing Indian and section 283 of the English Act. The English section with the modifications suggested in paragraph 216 and page 318 of the Company Law Committee's Report has been substituted for the existing section.

*Clause 455.*—See section 208 of the existing Indian and section 284 of the English Act.

*Clause 456.*—See section 208A(1) of the existing Indian and section 285 (1) of the English Act. The Company Law Committee's recommendation that the liquidator's remuneration should not be enhanced, has been implemented in sub-clause (2).

*Clause 457.*—See section 208A(2) of the existing Indian and section 285(2) of the English Act.

*Clause 458.*—See section 208B of the existing Indian and section 286 of the English Act.

*Clause 459.*—This gives effect to the recommendation in paragraph 214 of the Company Law Committee's Report. It is considered desirable to put the provision as an independent clause, instead of as a sub-clause of the previous clause.

*Clause 460.*—See section 208C of the existing Indian Act and section 287 of the English Act.

*Clause 461.*—This corresponds to section 288 of the English Act and gives effect to the recommendation in paragraph 215 of the Company Law Committee's Report.

*Clause 462.*—See section 208D of the existing Indian Act and section 288 of the English Act.

*Clause 463.*—See section 208E of the existing Indian and section 290 of the English Act. A penalty has been provided for as suggested at page 319 of the Company Law Committee's Report.



*Clause 464.*—This embodies section 291 of the English Act, which has been suggested for incorporation at page 319 of the Company Law Committee's Report. See recommendation (b) under section 208E.

*Clause 465.*—See section 209 of the existing Indian and section 292 of the English Act.

*Clause 466.*—See section 209A of the existing Indian and section 293 of the English Act. Recommendation (a) at page 319 and recommendation (c) at page 320 of the Company Law Committee's Report have been incorporated.

*Clause 467.*—This gives effect to recommendation (b) at pages 319 and 320 of the Company Law Committee's Report.

*Clause 468.*—See section 209B of the existing Indian and section 294 of the English Act.

*Clause 469.*—See section 209C of the existing Indian, and section 295, of the English Act. As recommended at page 320 of the Company Law Committee Report, section 295 (2) of the English Act has been incorporated in this clause.

*Clause 470.*—See section 209D(1) of the existing Indian and section 296(1) of the English Act. The recommendation of the Company Law Committee's Report (paragraph 212) and page 318 of the Report that the enhanced remuneration of the liquidator once fixed should not be subsequently been given effect to in sub-clause (3) of this clause.

*Clause 471.*—See section 209 (2) of the existing Indian and section 296 of the English Act.

*Clause 472.*—See section 209E of the existing Indian and section 297 of the English Act.

*Clause 473.*—See section 209F of the existing Indian and section 298 of the English Act.

*Clause 474.*—See section 209G of the existing Indian and section 299 of the English Act.

*Clause 475.*—See section 209H of the existing Indian and section 300 of the English Act. The penalty in sub-clause (7) has been enhanced to 500 rupees as suggested by the Company Law Committee at page 320 of its Report.

*Clause 476.*—See section 210 of the existing Indian and section 301 of the English Act.

*Clause 477.*—See section 211 of the existing Indian and section 302 of the English Act.

*Clause 478.*—See section 212 of the existing Indian and section 303 of the English Act.

*Clause 479.*—See section 213 of the existing Indian and section 304 of the English Act.

*Clause 480.*—See section 214 of the existing Indian and section 305 of the English Act.

*Clause 481.*—See section 215 of the existing Indian and section 306 of the English Act.

*Clause 482.*—See section 216 of the existing Indian and section 307 of the English Act. As suggested by the Company Law Committee at page 320 of the Report, sub-section (3) of section 307 of the English Act has been incorporated as sub-clause (5) of the new clause.

*Clause 483.*—corresponds to section 217 of the Indian Act and section 309 of the English Act.

*Clause 484.*—corresponds to section 218 of the existing Indian and section 310 of the English Act. Although the Company Law Committee has suggested the deletion of this provision (*vide* page 320 of its Report), it is considered desirable to retain it so as to make the position quite clear.

*Clause 485.*—See section 221 of the Indian Act and 311 of the English Act.

*Clause 486.*—See section 222 of the existing Indian Act and section 312 of the English Act.

*Clause 487.*—See section 224 of the Indian and section 314 of the English Act.

*Clause 488.*—See section 225 of the Indian and section 315 of the English Act.

*Clause 489.*—See section 226 of the Indian and section 241 (c) of the English Act.

*Clause 490.*—See section 228 of the Indian and 316 of the English Act.

*Clause 491.*—See section 229 of the Indian Act and section 317 of the English Act.

*Clause 492.*—See section 230 of the Indian and section 319 of the English Act. The recommendation contained in paragraph 218 and pages 321 and 322 of the Company Law Committee's Report has been incorporated in the new clause.

*Clause 493.*—See section 231 of the Indian and section 320 of the English Act. See also paragraph 219 of the Company Law Committee's Report. This clause is based on section 320 of the English Act as recommended by the Committee. Necessary consequential changes have also been incorporated in the clause as recommended by the Committee.

*Clause 494.*—corresponds to section 321 of the English Act, the incorporation of which has been recommended by the Company Law Committee as in para. 219 of its Report.

*Clause 495.* corresponds to section 233 of the Indian and section 322 of the English Act. The period of three months in the existing section has been extended to twelve months as in the English Act. This is in accordance with the Company Law Committee's recommendation at page 323 of the Report. The proviso makes a consequential change.

*Clause 496.*—See section 230A of the Indian Act and section 323 of the English Act.

*Clause 497.*—corresponds to section 227 of the Indian Act. The best place for this provision seems to be immediately before that relating to the “avoidance of attachment and executions” reproduced in the next clause.

*Clause 498.*—See section 232 of the Indian Act and sections 228 and 313 of the English Act.

*Clause 499.*—See section 238A of the existing Indian and section 328 of the English Act.

*Clause 500.*—See section 236 of the existing Indian and section 329 of the English Act.

*Clauses 501 to 503.*—These incorporate the provisions of sections 330 to 332 of the English Act as recommended by the Company Law Committee in paragraph 220 of the Report. See also pages 323 and 324 of the Report. Clause 502 has been slightly modified on the lines indicated at page 323 of the Report.

*Clause 504.*—See section 235 of the existing Indian and section 333 of the English Act. The period of three years has been extended to five years as recommended by the Company Law Committee at page 323 of the Report.

*Clause 505.*—This is consequential on clauses 501 to 504.

*Clause 506.*—See section 237 of the existing Indian and section 334 of the English Act.

*Clause 507.*—This is based on section 335 of the English Act, which is recommended for incorporation by the Company Law Committee at paragraph 217 of the Report.

*Clause 508.* incorporates section 336 of the English Act as recommended in paragraph 217 aforesaid.

*Clause 509.*—See section 234 of the Indian Act.

*Clause 510.*—See section 240 of the existing Indian and section 340 of the English Act.

*Clause 511.*—See section 241 of the existing Indian Act and section 266 of the English Act.

*Clause 512.*—See section 242 of the existing Indian and section 341 of the English Act.

*Clause 513.*—See section 244 of the existing Indian and section 342 of the English Act.

*Clause 514.*—See section 244A of the existing Indian and section 248 of the English Act.

*Clause 515.*—See section 244B of the existing Indian and section 343 of the English Act.

*Clause 516.*—See section 239 of the Indian Act and section 346 of the English Act. The provisions have been generalised so as to be applicable to all classes of winding up. In other words, sections 174, 223 and 239 of the Indian Act have been consolidated in this clause as recommended at pages 316 and 325 of the Report.

*Clause 517.*—See section 245 of the Indian Act and section 351 of the English Act. As Jammu and Kashmir State has acceded to the Union in respect of foreign affairs, there can be no Indian Consul or Vice-Consul in that

State. In other words Jammu and Kashmir State is to be treated in the same way as other States in India so far as this clause is concerned.

*Clause 518.*—See section 243 of the Indian Act and 352 of the English Act.

*Clause 519.*—See section 247 of the existing Indian and section 353 of the English Act.

#### PART VIII

*Clause 520.*—See section 250 of the existing Indian Act and section 377 of the English Act. Although the Company Law Committee has suggested the omission of the proviso (See page 329 of its Report) it is considered safer to retain it. Compare the provision to section 377 of the English Act.

*Clause 521.*—See section 251 of the existing Indian Act and section 378 of the English Act.

*Clause 522.*—This is based on section 379 of the English Act. It clearly brings out the implication of the previous clause. It is considered desirable to have a specific provision as regards this matter as in the English Act.

*Clause 523.*—See section 252 of the existing Indian Act and section 380 of the English Act.

#### PART IX

*Clause 524.*—See section 253 of the existing Indian Act and section 382 of the English Act.

*Clause 525.*—See section 254 of the existing Indian Act and section 383 of the English Act.

*Clause 526.*—See section 255 of the existing Indian Act and section 384 of the English Act.

*Clause 527.*—See section 256 of the existing Indian Act and section 385 of the English Act.

*Clause 528.*—See section 257 of the existing Indian Act and section 386 of the English Act.

*Clause 529.*—See section 258 of the existing Indian Act and section 387 of the English Act.

*Clause 530.*—See section 259 of the existing Indian Act and section 430 of the English Act.

*Clause 531.*—This is based on section 388 of the English Act. It is clearly necessary that this provision should be incorporated.

*Clause 532.*—See section 261 of the existing Indian Act and section 389 of the English Act.

*Clause 533.*—See section 262 of the existing Indian Act and section 390 of the English Act.

*Clause 534.*—See section 263 of the existing Indian Act and section 391 of the English Act.

*Clause 535.*—See section 264 of the existing Indian Act and section 392 of the English Act.

*Clause 536.*—See section 265 of the existing Indian Act and section 393 of the English Act.

*Clause 537.*—See section 266 of the existing Indian Act and section 394 of the English Act.

*Clause 538.*—See section 267 of the existing Indian Act and section 395 of the English Act.

*Clause 539.*—See section 268 of the existing Indian Act and section 396 of the English Act.

*Clause 540.*—See section 269 of the existing Indian Act and section 397 of the English Act.

## PART X

*Clause 541.*—See section 270 of the existing Indian Act and section 398 of the English Act.

*Clause 542.*—See section 271 (1) and (2) of the existing Indian Act and section 398 of the English Act.

*Clause 543.*—See section 271 (3) of the existing Indian Act and section 400 of the English Act.

*Clause 544.*—See section 272 of the existing Indian Act and section 401 of the English Act.

*Clause 545.*—See section 273 of the existing Indian Act and section 402 of the English Act.

*Clause 546.*—See section 274 of the existing Indian Act and section 403 of the English Act.

*Clause 547.*—See section 275 of the existing Indian Act.

*Clause 548.*—See section 276 of the existing Indian Act and section 404 of the English Act.

*Clause 549* is based on 405 of the English Act.

## PART XI

*Clauses 550-567.*—These are mostly based on the redraft section recommended by the Company Law Committee as sections 277 to 277E, 10 at pages 432-440 of the Report. The redraft closely follow sections 407 to 423 of the English Act.

*Clause 550.*—See section 277 of the redraft and section 406 of the English Act.

*Clause 551.*—See section 277A of the redraft and section 407 of the English Act.

*Clause 552.*—See section 277B of the redraft and section 409 of the English Act.

*Clause 553.*—See section 277C of the redraft and section 410 of the English Act. Power has been taken in this clause to modify the requirements of this section in the case of foreign companies in the case of which rigid insistence on compliance with the provisions of the clause will not be easily practicable. In such cases the power to modify the requirements conferred on the Government by the clause will be useful.

*Clause 554.*—See section 277D of the redraft and section 411 of the English Act. The latter portion of sub-clause (b) of this clause is based on the redraft and there is no corresponding provision in the English Act.

*Clause 555.*—See section 277E of the redraft and section 412 of the English Act.

*Clause 556.*—This is based on section 277E. 1 of the redraft and section 413 of the English Act.

*Clause 557.*—This is based on section 277E. 2 of the redraft and section 414 of the English Act.

*Clause 558.*—This is based on the proviso to section 277E.2 of the redraft.

*Clause 559.*—This is based on section 277E.3 of the redraft. See also section 106 of the English Act in this connection.

*Clause 560.*—This corresponds to sub-section (8) of section 277 of the existing Act.

*Clause 561.*—This is based on section 277 E.4 of the redraft and section 415 of the English Act.

*Clause 562.*—See section 277E.5 of the redraft and section 417 of the English Act.

*Clause 563.*—See section 277E.6 of the redraft and section 419 of the English Act.

*Clause 564.*—See section 277E.7 of the redraft and section 420 of the English Act.

*Clause 565.*—See section 277E.8 of the redraft and section 421 of the English Act.

*Clause 566.*—See section 277E.9 of the redraft and section 422 of the English Act.

*Clause 567.*—See section 277E.10 of the redraft and section 423 of the English Act.

## PART XII

*Clause 568.*—Corresponds to section 248 of the existing Indian Act and 424 of the English Act.

*Clause 569.*—Corresponds to section 248(5) of the existing Indian Act and section 426 of the English Act.

*Clause 570.*—Corresponds to section 249(1) of the existing Indian Act and 425 (1) of the English Act.

*Clause 571.*—Corresponds to section 249 (2) of the existing Indian Act and section 425(2) of the English Act. A separate section has been provided for as not only the fees in Table B which are referred to in clause 570 but also other fees which have to be accounted for to the Central Government.

*Clause 572.*—This confers in general the power on the Central Government to reduce any fee, charge, or other sum specified in the Act as payable to the Central Government.

*Clause 573.*—Corresponds to section 249A of the existing Indian Act and section 428 of the English Act.

*Clause 574.*—Incorporates the provision contained in section 287 of the Indian Act. It makes it clear that insurance and other companies which are governed by special Acts will continue to be governed by those Acts and that such companies will be governed by the provisions of the bill in so far as those provisions are not inconsistent with those contained in the special Acts governing those companies.

*Clause 575.*—This is intended to give power to the Central Government to modify the application of the Act where the shares or the predominant interest is held by the Central or a State Government or by two or more of those Governments. It is only where the interest held by the Government or Governments concerned is  $\frac{1}{4}$ th or more of the total paid up share capital of the company that this provisions of this clause can be invoked.

*Clause 576.*—Corresponds to section 289A of the existing Act.

*Clause 577.*—This is based on the redraft of section 278(1) in pursuance of paragraphs 203 and 233 of the Company Law Committee's Report Which is to be found at pages 441 to 442 of the Report.

*Clause 578.*—Corresponds to sub-section (2) of the redraft of section 278 at page 441 of the Company Law Committee's Report.

*Clause 579.*—Corresponds to sub-section (3) of the redraft mentioned above.

*Clause 580.*—Corresponds to sub-section (4) of the redraft mentioned above.

*Clause 581.*—This embodies sub-sections (5) to (11) of the redraft referred to above. This is intended to safeguard directors and other officers of the companies from frivolous or vexatious attacks in criminal cases. The principal change is that the compensation which may be awarded has been raised from Rs. 250 provided for in the Civil Procedure Code to Rs. 5,000. The imprisonment which may be ordered in default of payment has been enhanced from one to six months.

*Clause 582.*—This is intended to give effect to the recommendations of the Company Law Committee in paragraph 191 of the Report. See also page 308.

*Clause 583.*—This corresponds to section 279 of the existing Act and 444 of the English Act.

*Clause 584.*—This corresponds to section 441 of the English Act the application of which is recommended in paragraph 234 of the Company Law Committee's Report.

*Clause 585.*—Corresponds to section 282 of the Indian Act and section 438 of the English Act.

*Clause 586.*—Corresponds to section 238 of the Indian Act. It is clear that the provisions of that section should not be confined to false evidence in winding-up proceedings but should extend generally to false evidence given in all proceeding under the Bill.

*Clause 587.*—Corresponds to section 282A of the existing Act.

*Clause 588.*—Corresponds to section 283 of the Indian Act and section 439 of the English Act.

*Clause 589.*—corresponds to section 280 of the Indian and section 447 of the English Act.

*Clause 590.*—corresponds to section 281 of the Indian and section 444 of the English Act.

*Clause 591.*—This enables the company to reduce any fee, charges, etc. payable to it by virtue of the provisions of the Bill or of the provisions contained in the articles governing the company. In a number of places reference is made in the existing Act to a specific fee with power to the company to reduce the amount of the fee. The insertion of this clause makes it unnecessary to refer to the power of the company to reduce the fee, charges, etc., in various places in the Bill.

*Clause 592.*—This provides for the delegation by the Central Government of its power and functions under the Act. The Company Law Committee recommended the creation of a Central Authority in which various powers should be vested. This will enable the Government to implement this recommendation as soon as the time is ripe for doing so.

*Clause 593.*—This is based on the recommendation of the Company Law Committee that there should be an Annual Report. See paragraph 262 and page 337 of the Company Law Committee's Report. The corresponding section of the English Act is section 451.

*Clause 594.*—This corresponds to section 151(2) and (3) of the existing Act and section 454 of the English Act. Power has been taken in general terms to alter or add to all the schedules except schedules XI and XII.

*Clause 595.*—This is based on section 151(1) of the Indian Act and section 454 of the English Act.

*Clause 596.*—This is based on section 151(4) and (5) of the existing Indian Act.

*Clause 597.*—This is largely based on section 246 of the existing Indian Act. Having regard to the fact that the rule-making power will be conferred not only in regard to matters relating to the winding up of a company but also in regard to other matters, *e.g.*, those concerned with the approval of terms with creditors and members, the reduction of share capital, the subdivision of shares, etc., the appropriate place for this provision will not be in Part VII which deals only with the winding up of the companies but in the General Part, *viz*; Part XIII.

*Clause 598.*—This provides for the continuance of such of the provisions of the amending Act (L II of 1951) as have not been incorporated in the Bill. The power conferred by section 7 of that Act with regard to giving power to the Court to act when a company acts either prejudicially to its own interest or practises oppression of any of its member or members, have been embodied in clauses 367-377 of the Bill. The other provisions giving powers of control to the Government in respect of the appointment, reappointment, etc., of the directors, managing agents and the like, contained in sections 2 to 6 of the amending Act, providing for the constitution of a commission to advise the Government on the matters referred to in those sections (section 8) were not intended to have permanent application but only to deal with what is believed to be a transitional phase in the management of the companies in this country. These provisions, therefore,



stand repealed. Some changes have been incorporated in those provision have been limited in their operation to three years. After that time they will

*Clause 599.*—This corresponds to section 290 of the Indian Act and section 459 of the English Act.

*Clause 600 to 612.*—These contain various saving provisions which are found in the English Act (section 459) and in sections 284, 285, 286, 287, 288 and 290 of the Indian Act. It is considered desirable to have a specific clause for each of the saving clauses instead of lumping them together so as to make it easy to follow the intention of the Bill.

*Clause 600.*—corresponds to sub-section (2) of section 459 of the English Act.

*Clause 601.*—corresponds to sub-section (6) of Section 459 of the English Act.

*Clause 602.*—corresponds to section 284 of the existing Indian Act.

*Clause 603.*—corresponds to sub-section (8) of section 459 of the English Act.

*Clause 604.*—corresponds to sub-section (1) of section 459 of the English Act.

*Clause 605.*—corresponds to section 288 of the existing Indian Act.

*Clause 606.*—This is based on sub-section (11) of section 459 of the English Act.

*Clause 607.*—This is based on section 286 of the existing Indian Act.

*Clause 608.*—This is based on sub-section (12) of section 459 of the English Act.

*Clause 609.*—This is based on sub-section (13) of section 459 of the English Act.

*Clause 610.*—This is based on sub-section (14)(a) of section 459 of the English Act, and proviso (a) to sub-section (1) of section 290 of the existing Indian Act.

*Clause 611.*—This is based on sub-sections (14)(b), (c), (d) and (e) of section 459 of the English Act and provisos (b) and (c) to section 290 (1) of the existing Indian Act.

*Clause 612.*—This is based on section 290(3) of the existing Indian and sub-section (16) of section 459 of the English Act.

## SCHEDULE I.

### TABLE A

All compulsory regulations including those mentioned in section 17(2) of the existing Act as well as additional compulsory regulations mentioned in the Company Law Committee's Report have been embodied in the body of the Bill. Those regulations have therefore been omitted from Table A. Some of the regulations in the Table merely draw attention to the relevant provisions of the Act; for example regulations 2, 106, 107 and 111. These regulations have also been omitted. There is no need to duplicate in Table A the provisions contained in the body of the Bill. It is not only inartistic but might give rise to difficulties where the terms of the provision in the articles are not identical with those in the body of the Bill.

*Regulation 1.*—See regulation 1 of the existing Table A. Instead of the last portion of that regulation provision has been made for the general applicability of the rules on interpretation contained in the General Clauses Act.

*Regulation 2.*—This corresponds to existing regulation 3 of the existing Indian Table A and regulation 2 of the English Table A.

*Regulation 3.*—See regulation 3 of the English Table A.

*Regulation 4.*—See regulation 4 of the existing Indian Table A.

*Regulation 5.*—See regulation 5 of the English Table A.

*Regulation 6.*—See regulation 6 of the English Table A.

*Regulation 7.*—See regulation 7 of the English Table A.

*Regulation 8.*—See existing Indian regulation 6 and regulation 8 of the English Table A.

*Regulation 9.*—See existing Indian regulation 7 and regulation 9 of the English Table A.

*Regulation 10.*—See existing Indian regulation 9 and regulation 11 of the English Table A. The two sentences have been split up into two clauses.

*Regulation 11.*—See existing Indian regulation 10 and regulation 12 of the English Table A.

*Regulation 12.*—See regulation 13 of the English Table A.

*Regulation 13.*—See existing Indian regulation 11 and regulation 14 of the English Table A.

*Regulation 14.*—See existing Indian regulation 12 and regulation 15 of the English Table A.

*Regulation 15.*—See regulation 16 of the English Table A.

*Regulation 16.*—See existing Indian regulation 13 and regulation 17 of the English Table A.

*Regulation 17.*—See existing Indian regulation 14 and regulation 18 of the English Table A.

*Regulation 18.*—See regulation 19 of the English Table A.

*Regulation 19.*—See existing Indian regulation 17 and English regulation 21.

*Regulation 20.*—See existing Indian regulation 18 and English regulation 22.

*Regulation 21.*—See existing Indian regulation 19 and regulation 23 of the English Table A.

*Regulation 22.*—The corresponding existing Indian regulation is 20. The Corresponding English regulation is 24. As there may be a right of appeal against the refusal of the directors to register the transfer of shares (See clause 105), the regulation has been suitably recast.

*Regulation 23.*—This corresponds to the second sentence of existing regulation 20. See regulation 25 of the English Table A.

*Regulation 24.*—See regulation 27 of the English Table A.

*Regulation 25.*—See English regulation 28.

*Regulation 26.*—This corresponds to regulation 21 of the existing Table A.  
A. Compare regulation 29 of the English Table A.

*Regulation 27.*—See existing regulation 22 and regulation 30 of the English Table A.

*Regulation 28.*—See regulation 31 of the English Table A.

*Regulation 29.*—See regulation 23 of the existing Table A and regulation 32 of the English Table A.

*Regulation 30.*—See regulation 24 of the existing Table and regulation 33 of the English Table.

*Regulation 31.*—See regulation 25 of the existing Indian Table A and regulation 34 of the English Table A.

*Regulation 32.*—See regulation 26 of the existing Table A and regulation 35 of the English Table A.

*Regulation 33.*—See existing Indian regulation 27 and regulation 36 of the English Table A.

*Regulation 34.*—See existing Indian regulation 28 and regulation 37 of the English Table A.

*Regulation 35.*—See existing Indian regulation 29 and regulation 39 of the English Table A.

*Regulation 36.*—See existing Indian regulation 30 and regulation 39 of the English Table A.

*Regulation 37.*—See existing Indian regulation 30 and regulation 40 of the English Table A.

*Regulation 38.*—See existing Indian regulation 32 and regulation 41 of the English Table A.

*Regulation 39.*—See existing Indian regulation 33 and English regulation 42.

*Regulation 40.*—See existing Indian regulation 34 and regulation 43 of the English Table A.

*Regulation 41.*—See existing Indian regulation 35.

*Regulation 42.*—See existing Indian regulation 38.

*Regulation 43.*—See existing Indian regulation 39.

*Regulation 44.*—See existing Indian regulation 40.

*Regulation 45.*—See regulation 41 of the Indian Table A and regulation 44 of the English Table A.

*Regulation 46.*—See regulation 45 of the English Table A and existing Indian regulation 44.

*Regulation 47.*—The existing Indian regulation (44A) has been incorporated here. See also regulation 46 of the English Table A.

*Regulation 48.*—The existing Indian regulation has been incorporated. See also regulation 48 of the English Table A.

*Regulation 49.*—See existing Indian regulation 48 and English regulation 49.

*Regulation 50.*—See existing Indian regulation 51 and regulation 53 of the English Table A.

*Regulation 51.*—See existing regulation 53 and regulation 55 of the English Table A.

*Regulation 52.*—See existing Indian regulation 54.

*Regulation 53.*—See regulation 56 of the English Table A.

*Regulation 54.*—See existing Indian regulation 55 and regulation 57 of the English Table A.

*Regulation 55.*—See existing Indian regulation 58 and regulation 60 of the English Table A.

*Regulation 56.*—See the second sentence of existing Indian regulation 59 and the second sentence of regulation 61 of the English Table A.

*Regulation 57.*—See existing Indian regulation 60 and regulation 62 of the English Table A.

*Regulation 58.*—See existing Indian regulation 61 and regulation 63 of the English Table A.

*Regulation 59.*—See existing Indian regulation 62 and regulation 64 of the English Table A.

*Regulation 60.*—See existing Indian regulation 63 and regulation 65 of the English Table A.

*Regulation 61.*—See regulation 66 of the English Table A.

*Regulation 62.*—See regulation 66 of the Indian Table A and regulation 68 of the English Table A.

*Regulation 63.*—See existing Indian regulation 67.

*Regulation 64.*—See existing Indian regulation 62 and regulation 73 of the English Table A.

*Regulation 65.*—See existing Indian regulation 68 and regulation 75 of the English Table A.

*Regulation 66.*—See existing Indian regulation 69 and regulation 76 of the English Table A.

*Regulation 67.*—See existing Indian regulation 70.

*Regulation 68.*—See existing Indian regulation 71 and regulation 80 of the English Table A.

*Regulation 69.*—See regulation 82 of the English Table A.

*Regulation 70.*—See regulation 83 of the English Table A.

*Regulation 71.*—See regulation 85 of the English Table A.

*Regulation 72.*—See existing Indian regulation 75 and regulation 86 of the English Table A.

*Regulation 73.*—See existing Indian regulation 72 and regulation 81 of the English Table A.

*Regulation 74.*—See existing Indian regulation 87 and regulation 98 of the English Table A.

*Regulation 75.*—See existing Indian regulation 87 and regulation 98 of the English Table A.

*Regulation 76.*—See existing Indian regulation 89 and regulation 100 of the English Table A.

*Regulation 77.*—See existing Indian regulation 90 and regulation 101 of the English Table A.

*Regulation 78.*—See existing Indian regulation 91 and regulation 102 of the English Table A.

*Regulation 79.*—See existing Indian regulation 92 and regulation 103 of the English Table A.

*Regulation 80.*—See existing Indian regulation 93 and regulation 104 of the English Table A.

*Regulation 81.*—See existing Indian regulation 94 and regulation 105 of the English Table A.

*Regulation 82.*—See regulation 106 of the English Table A.

*Regulation 83.*—See regulation 110 of the English Table A.

*Regulation 84.*—See regulation 112 of the English Table A.

*Regulation 85.*—See regulation 113 of the English Table A.

*Regulation 86.*—See existing Indian regulation 95 and regulation 114 of the English Table A.

*Regulation 87.*—See existing Indian regulation 96 and regulation 115 of the English Table A.

*Regulation 88.*—See existing Indian regulation 99 and regulation 117 of the English Table A.

*Regulation 89.*—See existing Indian regulation 98 and regulation 118 of the English Table A.

*Regulation 90.*—See regulation 119 of the English Table A.

*Regulation 91.*—See regulation 120 of the English Table A.

*Regulation 92.*—See regulation 121 of the English Table A.

*Regulation 93.*—See existing Indian regulation 100.

*Regulation 94.*—See existing Indian regulation 101.

*Regulation 95.*—See existing Indian regulation 102 and regulation 122 of the English Table A.

*Regulation 96.*—See existing Indian regulation 105 and regulation 123 of the English Table A.

*Regulation 97.*—See regulation 128 of the English Table A.

*Regulation 98.*—See regulation 129 of the English Table A.

*Regulation 99.*—See regulation 135 of the English Table A.

*Regulation 100.*—See regulation 136 of the English Table A.

### SCHEDULE I

#### TABLE B

This embodies only the provisions in the existing Table B. Slight drafting improvements have been made. It will be open to the Government to alter the fees prescribed by the list in pursuance of the power conferred on them by clause 594 of the Bill.

### SCHEDULE II

This corresponds to the Fourth Schedule of the English Act. Some slight alterations and amplifications suggested by the Company Law Committee in the redraft of the Schedule at pages 390 to 398 of the Report have also been embodied.

### SCHEDULE III

This corresponds to the Fifth Schedule of the English Act. The provisions contained in that Schedule have been incorporated with some additions and alterations here and there.

### SCHEDULE IV

This corresponds to the Third Schedule of the English Act. Some additions and alteration have been made.

### SCHEDULE V

This corresponds to the Sixth Schedule of the English Act. It has been made clear that the annual return should relate to the date of the last annual general meeting. No other changes of substance have been made.

### SCHEDULE VI—PART I

This is mostly based on the Company Law Committee's draft Balance Sheet at pages 408 to 416 of the Report. The alterations made are not substantial and are only intended to give effect to the intention of the Company Law Committee in as clear terms as possible. When any assets are written up in a balance sheet, the amount of the increase will have to be noted in the balance sheets for subsequent five years instead of for three subsequent years. This alteration has been made in order to make the provision uniform with that which will apply where the assets are written down.

### SCHEDULE VI—PART II

This is also based on the form suggested by the Company Law Committee at pages 417 to 420 of the Report. Here again nothing has been changed except for a few minor drafting improvements, which are intended to make the position as clear as possible.

## SCHEDULE VII

This is based on the Company Law Committee's recommendation in paragraph 134 of the Report. See also page 367 of the Report. The managing agent, in addition to the specific powers mentioned by the Company Law Committee will also have all powers which may be lawfully delegated to him by the directors. This is in accordance with the intention of the Company Law Committee.

## SCHEDULE VIII

See clause 328, and the note on that clause explain the scope of this Schedule.

## SCHEDULE IX

See clause 167 (6) and the note thereon. That note explains the need for this Schedule.

## SCHEDULE X

This corresponds to Schedule III to the Existing Act. No changes of any substance have been made.

## SCHEDULE XI

See clause 598 and the note on that clause.

## SCHEDULE XII

See Clause 599 and the note on that clause.

M. N. KAUL,

*Secretary.*

